

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

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No. 117

FEDERAL COMMUNICATIONS COMMISSION,  
APPELLANT

vs.

AMERICAN BROADCASTING COMPANY, INC.

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No. 118

FEDERAL COMMUNICATIONS COMMISSION,  
APPELLANT

vs.

NATIONAL BROADCASTING COMPANY, INC.

---

No. 119

FEDERAL COMMUNICATIONS COMMISSION,  
APPELLANT

vs.

COLUMBIA BROADCASTING SYSTEM, INC.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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1 In United States District Court, Southern District of  
New York

Civil Action No. 52-24

AMERICAN BROADCASTING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COM-  
MISSION, DEFENDANTS

[File endorsement omitted.]

*Stipulation for Filing Amended Complaint*

Filed September 22, 1952

It is hereby stipulated and agreed:

1. Defendants consent to the filing by plaintiff of an amended complaint in the form annexed hereto marked Exhibit A.

2. It appearing that the parties intend to move for summary judgment, for the purpose of such motions (a) all the allegations of fact set forth in the amended complaint in this action shall be taken as admitted by the defendants, and (b) either plaintiff or defendants may rely upon facts set forth in the amended complaints in the companion actions of National Broadcasting Company v. FCC, Civil Action No. 52-37, and Columbia Broadcasting System v. FCC, Civil Action No. 52-38, and upon the affidavits, or any of them, filed in either of said companion actions by either plaintiffs or defendants therein.

Dated September 16, 1952.

CRAVATH, SWAINE & MOORE,  
By ALFRED McCORMACK,  
*Attorneys for Plaintiff,*

WILLIAM J. HICKEY,  
MYLES J. LANE,  
*Attorneys for Defendant, United States of America,*  
DANIEL R. OHLBAUM,  
*Attorney for Defendant,*  
*Federal Communications Commission.*

So ordered September 22, 1952.

EDWARD A. CONGER,  
U. S. D. J.

2 In United States District Court

Civil Action No. 52-24

[Title omitted.]

*Amended complaint*

(Filed September 22, 1952)

Plaintiff, for its amended complaint herein, alleges:

1. This action is brought pursuant to the provisions of Section 402 (a) of the Communications Act of 1934, as amended (47 U. S. C. § 402 (a)), Title 28, U. S. Code (28 U. S. C. §§ 1336, 1398, 2284, 2321-25), and Section 10 of the Administrative Procedure Act (5 U. S. C. § 1009) to enjoin, set aside and annul an order of the Federal Communications Commission (hereinafter referred to as "the Commission") issued August 18, 1949, in proceedings entitled "In the Matter of Promulgation of Rules Governing Broadcast of Lottery Information, Federal Communications Commission, Docket No. 9113" (said order together with the accompanying report being hereinafter sometimes together called the "Order").

2. The Order adopted and promulgated rules designated therein as §§ 3.192, 3.292 and 3.692 (hereinafter sometimes called "the Rules"). The effective date specified in the Order was October

1, 1949. The enforcement of the Rules and the Order was stayed by an order of this Court entered by Judge Simon H. Rifkind on September 23, 1949, pending determination of an application by plaintiff for an interlocutory injunction. On September 21, 1949, the Commission adopted and issued an additional order postponing the effective date of the Rules and Order until at least 30 days after a final decision by the Supreme Court of the United States in this and other pending litigation with respect to such Rules and Order or 30 days after the time within which an appeal to the Supreme Court of the United States may be taken in such litigation has expired without such an appeal being taken.

3. Plaintiff is a corporation organized under the laws of the State of Delaware and has its principal office in the County of New York, State of New York, and in the Southern District thereof.

4. Defendant Federal Communications Commission was created by said Communications Act of 1934 (hereinafter referred to as "the Communications Act") for the purposes of regulating interstate and foreign commerce in communication by wire and radio, of national defense, of promoting safety of life and property through the use of wire and radio communication and of centralizing authority in a single agency.

5. The United States of America is made a defendant in this suit pursuant to the provisions of the Act of June 25, 1948 (28 U. S. C. § 2322), and the Communications Act (47 U. S. C. § 402 (a)).

6. Plaintiff for many years has been, and now is, engaged in the business of broadcasting radio and television programs; it owns directly or indirectly and operates five amplitude modulation (AM) broadcasting stations, five frequency modulation (FM) broadcasting stations and five television (TV) broadcasting stations. It is also engaged in the business of furnishing its network programs to its own stations and to stations affiliated with it, which together total approximately 323 amplitude modulation (AM) broadcasting stations, 75 frequency modulation (FM) broadcasting stations and 75 television (TV) broadcasting stations. Plaintiff's stations and those affiliated with it are known as "the ABC Network." All such stations operate under licenses granted by the Commission pursuant to the Communications Act. Licenses and renewals thereof are granted for periods of three years for AM and FM broadcasting stations and one year for TV broadcasting stations.

7. On or about August 5, 1948, the Commission released a "Notice of Proposed Rule Making" (13 Fed. Reg. 4748) announcing its intention to adopt rules setting forth certain types of programs which the Commission believes are in violation of Section 316 of the Communications Act and specifying that the proposed rules were issued under the authority of Sections 316, 4 (i) and 303 (r) of the Communications Act.

8. Section 316 of the Communications Act having been repealed effective September 1, 1948, by the Act of June 25, 1948, and a similar provision having been inserted in the Criminal Code as Section 1304 thereof, the Commission on or about August 27, 1948, released a "Supplemental Notice of Proposed Rule Making" (13 Fed. Reg. 5075) eliminating said Section 316 as one of the bases upon which the Commission claimed authority to issue the proposed rules and specifying Sections 4 (i), 303 (r), 307 (a), 308 (b) and 309 (a) of the Communications Act as authority for its proposed action.

9. Pursuant to said notices, plaintiff and others filed briefs in opposition to the proposed rules and participated in oral argument at a hearing thereon before the Commission on October 19, 1948, at which hearing the Commission did not present any argument in support of said proposed rules. Nor did the Commission have before it any evidence that programs coming within the terms of the Order were contrary to or adversely affected the public interest, or that the broadcast licensees broadcasting such programs were of bad character or otherwise unfit to hold such

licenses. Furthermore, the Commission made no finding that such programs were contrary to or adversely affected the public interest except in so far as they may violate Section 1304 of the United States Criminal Code.

10. On August 18, 1949, the Commission, acting by four (one dissenting) of its seven members, issued a Report and Order, promulgating and adopting effective October 1, 1949, the following rules:

"LOTTERIES AND GIVE-AWAY PROGRAMS.—(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting 'the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.' (See U. S. C. § 1304.)

"(b) The determination whether a particular program comes within the provisions of subsection (a) depends on the facts of each case. However, the Commission will in any event consider

6 that a program comes within the provisions of subsection (a) if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize:

"(1) such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question; or

"(2) such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

"(3) such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous program will be considered as an aid in answering the question correctly; or

"(4) such winner or winners are required to answer the phone in a prescribed manner or with a prescribed phrase, or are required to write a letter in a prescribed manner or containing a prescribed phrase, if the prescribed manner of answering the phone or writing

the letter or the prescribed phrase to be used over the phone or in the letter (or an aid in ascertaining the prescribed phrase or the prescribed manner of answering the phone or writing the letter) is, or has been, broadcast over the station in question."

11. Plaintiff has expended substantial sums of money in building up among the public, advertisers and broadcasting stations a valuable reputation and good will for the broadcasting stations it owns and operates and for the programs broadcast by its stations and furnished to affiliated stations for broadcasting by them. From time to time, plaintiff broadcasts programs having as the central feature the conduct of a contest in which prizes are awarded to the successful contestants. Such programs, or some of them, are within the terms of the Rules defining the types of programs which the Commission "will in any event consider" as violations of Section 1304 of the Criminal Code, although none of such programs constitutes, or has been held by any court to constitute, a lottery, gift enterprise or similar scheme in violation of said Section. Such programs have not tended to demoralize or degrade the listening and viewing public but on the contrary have provided information and entertainment for the public. Many persons listen to, view and enjoy such programs although for one reason or another they are not eligible to win a prize. Such programs are highly popular, have contributed substantially to the reputation of and good will of plaintiff's stations and those affiliated with it and have produced substantial revenues and profits for plaintiff.

12. Among such programs which are or may be within the terms of the Rules, and which we are informed and believe the Commission considers as coming within the Rules, are the following:

"Stop The Music" (radio show).

"Stop The Music" (television show).

A description of each of said programs is set forth in Exhibit A annexed hereto.

13. Unless the Order and the Rules be permanently enjoined, annulled and set aside, plaintiff's applications for renewal of existing licenses for broadcasting stations and for any additional permits, licenses or authorizations for the construction or operation of broadcasting stations, and similar applications by broadcasting stations affiliated with plaintiff, will automatically be denied by the Commission if plaintiff and its affiliated stations broadcast such programs after the Order has become effective; and the Commission may also, pursuant to the provisions of Sections 308 and 312 of the Communications Act, revoke prior to expiration the station licenses of some or all of such broadcasting stations.



14. Plaintiff's AM, FM and TV broadcasting stations have an aggregate value of many millions of dollars, and its business of operating such stations has an even greater value because of the good will thereof, all of which values will be destroyed if its licenses for such stations shall not be renewed by the Commission. The other stations of the ABC Network also represent very large investments which will similarly be destroyed if the licenses of such stations shall not be renewed by the Commission. Plaintiff's business of supplying programs to its affiliated stations will likewise be destroyed or greatly damaged if either the licenses of its stations or those of any substantial number of its affiliated stations shall not be renewed by the Commission.

15. If, therefore, the Order shall become effective, plaintiff and its affiliated stations will be forced to discontinue the broadcasting of the aforesaid programs which are or may be within the Rules and plaintiff will be forced to discontinue offering such programs to its affiliated stations for broadcasting. In such event plaintiff will be compelled also to refrain from developing and offering to prospective advertisers new programs of a similar nature; plaintiff will be unable to perform contracts with sponsors of such programs then being broadcast and will be compelled to refrain from entering into additional contracts with sponsors of similar prospective programs; and plaintiff's revenues from sales of time on its own and its affiliated stations will be very greatly reduced. Plaintiff's investments in such programs will be  
9 destroyed and its property rights and the good will of the public, of other broadcast stations and of advertisers for plaintiff will be substantially and irreparably affected. In addition, if plaintiff shall be forced to discontinue the aforesaid programs, it will have to develop new or different programs as substitutes therefor and will have to make large outlays of money for that purpose; and, in addition, plaintiff will be required to carry some or all of such new programs on a sustaining or unsponsored basis in order to popularize them and thus make them attractive to advertising sponsors. By reason of the foregoing, plaintiff will suffer irreparable injury unless the order of the Commission shall be set aside.

16. The Order and the Rules are beyond the jurisdiction and authority of the Commission and are illegal and void, because

(a) The Commission is not authorized, either by the Communications Act or otherwise, to adopt rules or to exercise its licensing power, directly or indirectly, so as

(i) to alter or increase the sanctions provided by Congress for violations of Section 1304 of the Criminal Code; or

(ii) to impose sanctions for conduct allegedly in violation of said Section 1304 but not adjudicated as such by any court;

(b) The Commission is required by the Communications Act to grant and withhold licenses according to the standard of public interest, convenience or necessity, and is not authorized by said Act to make a violation of Section 1304 of the Criminal Code, whether or not adjudicated as such, the sole ground for  
10 withholding or revoking a license or denying a renewal thereof;

(c) The Order and the Rules are arbitrary, capricious and not in the public interest and constitute an abuse of discretion by the Commission;

(d) The Order and the Rules are erroneous as a matter of law, in that they are based upon an incorrect interpretation by the Commission of Section 1304 of the Criminal Code;

(e) The Order and the Rules are contrary to, and in violation of, Section 326 of the Communications Act, in that they constitute an exercise by the Commission of the power of censorship over radio communications;

(f) The Order and the Rules are contrary to Sections 4 (b) and 9 (a) of the Administrative Procedure Act; and

(g) The Order and the Rules are contrary to Sections 5 (a), 5 (b), 5 (c), 7 (a), 7 (c), 7 (d), 8 (a) and 8 (b) of the Administrative Procedure Act.

17. If the Communications Act authorizes the Commission to make the Order and the Rules, then said Act is contrary to and in violation of the First Amendment to the Constitution of the United States.

18. The Order and the Rules are in violation of the Constitution of the United States in that

(a) They constitute or have the effect of bills of attainder, contrary to Article I, Section 9, Clause 3 thereof;

(b) They deprive plaintiff of property without due process of law, in violation of the Fifth Amendment thereto;

11 (c) They subject plaintiff to punishment for a crime, without a hearing by any court and without trial by jury, in violation of Article III, Section 2, Clause 3 thereof, and the Sixth Amendment thereto.

19. Plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays:

1. That a court, constituted as required by Sections 2284 and 2325 of the Judicial Code (28 U. S. C. §§ 2284, 2325), be convened and that said Court so constituted and convened shall hear and determine this action;

2. That said Court so constituted and convened shall enter its order granting an interlocutory injunction restraining the enforcement, operation or execution, in whole or in part, of the order

of the Federal Communications Commission adopted August 18, 1949, pending final hearing and determination of this action;

3. That said Court so constituted and convened shall, upon final hearing and determination of this action, enter a decree permanently enjoining, setting aside and annulling said Order of the Commission adopted August 18, 1949, and the Rules adopted thereby; and

4. That plaintiff have such other and further relief as the Court may deem just and equitable.

G. B. ZORBAUGH,

30 Rockefeller Plaza, New York 20, N. Y.,

CRAVATH, SWAINE & MOORE,

15 Broad Street, New York 5, N. Y.,

Attorneys for American Broadcasting Company, Inc.

By ———, A Partner.

-----, 1952.

12 [Duly sworn to by G. B. Zorbaugh; jurat omitted in printing.]

13 *Exhibit A to amended complaint*

#### DESCRIPTION OF THE "STOP THE MUSIC" PROGRAM

##### RADIO VERSION

This is a program of musical entertainment, featuring popular musical selections played by an orchestra and, usually, sung by a male or female singer. Valuable prizes are awarded for the correct identification of musical tunes by title, primarily by persons who are called on the telephone from the studio, and secondarily by members of the studio audience.

The show proceeds with the playing and singing of particular tunes, which are interrupted by order of the Master of Ceremonies to "Stop the Music," after a telephone connection has been established between the studio and the home of a pre-selected contestant. The contestant is then asked to give the title of the interrupted tune. (In case he did not hear the tune over his radio, or for some other reason desires to have the tune repeated, the Master of Ceremonies hums or sings it to him over the telephone.) If he answers correctly, he receives a merchandise prize; if not, he gets a consolation prize, and a member of the studio audience is then given an opportunity to identify the same tune. If he is successful he gets the prize that would have gone to a successful telephone participant. If not, then he too gets a consolation prize.

When a telephone participant correctly identified the interrupted tune he receives, in addition to the merchandise prize, an

14 opportunity to identify another tune, called the "Mystery Melody." If he identifies the Mystery Melody he wins the jackpot prize, comprising such items as bonds, automobiles, rings, clothing, etc., and usually valued in the aggregate at several thousand dollars. Should the telephone contestant fail to identify the Mystery Melody, the program moves forward with the playing and singing of another musical number, which again is interrupted by an order to "Stop the Music" after another participant, also preselected, has been called on the telephone.

The interrupted melodies are not carried over from question to question; a different tune is rendered each time. The Mystery Melody, however, is played for each initially successful telephone contestant, and carries over from telephone call to telephone call, and from one program to the next and successive programs, until some telephone participant correctly identifies it by title. Additions to the jackpot prize are made each week so long as the Mystery Melody remains unidentified.

The individuals who are to be given the opportunity to participate by telephone during a given broadcast are selected at random in advance by celebrities of the screen, stage or radio or by other disinterested persons whose services are enlisted for that purpose. The process of selection involves selection of (a) a telephone directory; (b) a page in that directory; (c) a column on the page; and (d) the numerical position in the column where the chosen participant's name will be found. ABC maintains a library of the nation's telephone directories, buying them from the local telephone companies throughout the country, and attempts to keep its collection up to date and as nearly complete as is possible.

15 The person who is doing the selecting makes the first drawings from a receptacle containing small discs which bear numbers corresponding to catalogue numbers assigned to the respective telephone directories. For each such directory, depending upon a formula that gives weight to population, there are one, two or more discs bearing its number. For instance, the number assigned to the directory for a small town may appear on one disc, whereas that assigned to one of the larger cities may appear on, say, thirty discs, the purpose being to assure the inhabitants of larger cities more nearly the same chance of being selected as persons living in smaller communities.

After a particular telephone directory has been identified in the first drawing, the name of the participant is then determined by drawings of numbers from successive receptacles, which serve to identify the page, column and line in the particular directory on which the participant's name will be found; provided that, if the name so selected is not that of an individual but is, for example,

that of a business concern, the individual subscriber next listed becomes the prospective contestant.

During the early part of each weekly broadcast, telephone calls for the pre-selected persons are placed through the regular long-distance operators, in each case from 10 to 20 minutes before the time when the selected person is expected to participate. Special switchboard facilities, manned by ABC employees, are maintained at the place where the program originates. When a call has been completed, the ABC employee who has made the call explains to the person called the purpose of the call, identifies or briefly describes the program and invites that person to participate as a contestant. If he agrees, he is asked to tune in the program on his radio and the telephone connection with him is maintained until the moment arrives for connecting him with the Master of Ceremonies. But the participant is not required to tune in the program on his radio, and if he does not do so, or if he should happen not to have a radio, the Master of Ceremonies at his request (as already stated) hums or sings the initial tune for him over the telephone, and he can listen to the Mystery Melody over his telephone.

"Stop the Music" is owned and produced by Louis G. Cowan, Inc. The prizes awarded on the program are procured by that concern from the manufacturer, if the prize is an article of merchandise, or from the concern which provides the service in case the prize is a service. Prizes are ordinarily furnished in return for a brief advertisement of the product or service that is involved.

#### TELEVISION VERSION

"Stop the Music (TV)" proceeds in the same manner as the "Stop the Music" radio program, except that visual clues, usually in the form of brief dramatizations by members of the cast, accompany the playing and singing of tunes other than the Mystery Melody.

The persons who are to be called over the telephone are selected in a manner similar to that employed for the radio program. Persons who view the program on television are invited to send in postcards which, on receipt, are grouped together in file boxes and identified by a TV station number, a file box number and the numerical position in the file box. Telephone participants are determined by random selection of a series of numbered discs, a process substantially the same as that followed for the radio program.

"Stop the Music (TV)" is also owned and produced by Louis G. Cowan, Inc., and the prizes awarded on the program are obtained in the same manner as above stated with reference to the radio program.

20

In United States District Court

CRAVATH, SWAINE &amp; MOORE

15 BROAD STREET

New York 5

NEW YORK, October 14, 1952.

*American Broadcasting Company v. U. S. A. and F. C. C.*,  
Civil Action 52-24.

*National Broadcasting Company v. U. S. A. and F. C. C.*,  
Civil Action 52-37.

*Columbia Broadcasting System v. U. S. A. and F. C. C.*, Civil  
Action 52-38.

DEAR JUDGE LEIBELL: This letter is written on behalf of my firm as counsel for American Broadcasting Company, Messrs. Cahill, Gordon, Zachry & Reindel as counsel for National Broadcasting Company, Messrs. Rosenman, Goldmark, Colin & Kaye as counsel for Columbia Broadcasting System, Benedict P. Cottone, Esq., counsel for the Federal Communications Commission and the attorneys for the United States of America.

The above cases were marked for a pretrial conference to be held before your Honor on October 16, 1952, at 2:15 p. m. in Room 129 of the United States Court House.

For reasons appearing below, a pretrial conference was thought not to be necessary, and arrangements were made through Mr. Scheil for counsel in the three cases to meet with your Honor informally, at the time and place originally set for the pretrial conference, in order to discuss the matter of setting down the cases for argument.

21 We understand from Mr. Scheil that Your Honor wants to have a statement of the present position of the cases before meeting with counsel.

The actions were brought in August and September, 1949, to enjoin an order of the Federal Communications Commission which concerned the broadcasting of so-called "giveaway programs" over radio and television.

On September 19, 1949, Judge Rifkind entered an order in each action, convening a three-judge court to hear and determine the actions (such court to consist of himself, Your Honor and Judge Clark), and restraining the enforcement of the Commission's order pending a hearing by the three-judge court on plaintiffs' applications for preliminary injunctions. The latter applications were

made moot, however, by an order of the Commission itself, postponing the effective date of its own order until final determination of the above-entitled actions and another action in Chicago.

As counsel for the plaintiffs were of the view that the three cases could be presented to the court on a basis not involving factual issues, it was agreed with counsel for the Commission that the pleadings would be revised in such manner as to eliminate factual issues. Accordingly, after a considerable amount of discussion and exchanges of drafts of papers, amended complaints were filed and then, without the filing of any answers by the Commission, cross motions for summary judgment were made in each of the cases. The amended complaints and cross motions were filed September 22, 1952.

As we understand it, Judge Rifkind's resignation had the effect of dissolving the three-judge court constituted by his order, so that another three-judge court must be constituted.

It is the desire of all counsel to discuss with Your Honor on October 16 the matter of constituting a three-judge court and setting a date for hearing of the motions.

Sincerely yours,

Alfred McCormack.  
ALFRED MCCORMACK.

HON. VINCENT L. LEIBELL,  
*United States District Judge,  
United States Court House,  
Foley Square, New York 7, N. Y.*

MM.

23 In United States District Court  
Civil Action No. 52-24

[Title omitted.]

[File endorsement omitted.]

(*Affidavit*)

(Filed September 22, 1952)

STATE OF NEW YORK,  
*County of New York, ss:*

G. B. Zorbaugh, being duly sworn, deposes and says:

1. I am Secretary and Acting General Attorney for American Broadcasting Company, Inc. (hereinafter referred to as "ABC"), plaintiff in this action.

2. This affidavit is made in support of ABC's motion for summary judgment herein.



3. ABC's amended complaint, verified by me on September 19, 1952, gives the pertinent facts concerning the nature of ABC's business and its interest in the subject matter of this action, as well as the nature of the irreparable injury that ABC would suffer if the Order of defendant Federal Communications Commission (hereinafter referred to as "the Commission") dated August 18, 1949, and the Rules thereto attached, were to become effective.

4. Exhibit A hereto annexed is a true copy of the complaint and unreported decree in the case of Clef, Inc. v. Peoria Broadcasting Co., Eq. No. 21368, C. C. Peoria County, Illinois, decree entered November 21, 1939. The Clef complaint contains a description of the radio program known as Mu\$ico. The Court ruled that Mu\$ico was not a lottery and did not violate any statutes or laws of the United States of America.

5. In 1939, the Solicitor of the Post Office Department issued two rulings with respect to whether Mu\$ico was a lottery. In the first ruling, dated July 1, 1939, the Solicitor advised the Postmaster at Monroe, Wisconsin, that Mu\$ico did not violate the Federal lottery laws. In the second ruling, dated September 29, 1939, the Solicitor advised the Postmaster of Wyoming, Illinois, that Mu\$ico did violate the Federal lottery laws.

The Solicitor of the Post Office Department has since stated in a letter dated May 3, 1949, addressed to the attorneys for Columbia Broadcasting System, Inc., that:

"\* \* \* It is likely that if the 'Mu\$ico' plan were submitted to this office today, it would be held, in view of the change reflected in the enclosed notice, not to conflict with the postal lottery laws. \* \* \*

The notice which the Solicitor enclosed in his said letter of May 3, 1949, was as follows:

"Ruling of the Solicitor of the Post Office Department to Postmasters, February, 1947:

"Rulings on Lotteries, Gift Enterprises, etc.—All postmasters should carefully note the following with regard to the present policy of the Office of the Solicitor in making rulings on lotteries, gift enterprises, etc., under Section 601, P. L. & R. 1940.

"In order for a prize scheme to be held in violation of this section, it is necessary to show (in addition to the fact that the prizes are awarded by means of lot or chance) that the 'consideration' involves, for example, the payment of money for the purchase of merchandise, chance or admission ticket, or as payment on an account, or requires an expenditure of substantial effort or  
25 time. On the other hand, if it is required merely that one's name be registered at a store in order to be eligible for the prize, consideration is not deemed to be present" (P. O. Bulletin February 13, 1947).



6. On the radio program "Truth and Consequences" a prize of \$10,000 was offered for the correct identification of a well-known person, referred to as "Mr. Heartbeat," described in the following riddle which was repeated in the course of each broadcast of the program:

"Sigh Sigh Pie  
 "Half prince and pauper I  
 "I'm drab they say  
 "But remember fair play.  
 "Ring Ring Hi."

Additional clues to the identity of this person were broadcast on the program each week until identification was made. Listeners were requested during the course of broadcasts to send in postcards bearing their names, addresses and telephone numbers. Listeners were also urged to contribute to the Heart Association, but such a contribution was not a condition of participation in the contest. Each week during the contest three postcards were selected at random and telephone calls were made in the course of the broadcast to the persons named on the cards. If the person called answered the telephone, he was asked to identify "Mr. Heartbeat." No clues were given to him at the time of this telephone call. A correct identification entitled him to the \$10,000 prize; a consolation prize consisting of a set of sterling silver was awarded in case of an incorrect answer.

The Solicitor of the Post Office Department on March 2, 1950, ruled that matter relating to the "Mr. Heartbeat" contest was

26      A true copy of the letter to the Solicitor requesting the ruling with respect to the "Mr. Heartbeat" contest and a true copy of the Solicitor's ruling with regard thereto are hereto annexed as Exhibits B-1 and B-2, respectively.

7. Exhibit C-1 hereto annexed is a true copy of a letter addressed by plaintiff (by G. B. Zorbaugh) to the Solicitor of the Post Office Department requesting a ruling as to whether certain material therein described, relating to the television program "Stop the Music," would be acceptable for mailing under Section 601 of the Postal Laws and Regulations of 1940; and Exhibit C-2 hereto annexed is a true copy of a letter, dated May 9, 1949, to plaintiff replying to the aforesaid letter and giving such ruling.

8. Exhibit D hereto annexed is a true copy of a letter with enclosures, dated December 30, 1943, from James Lawrence Fly, then Chairman of the Commission, to Senator Burton K. Wheeler, Chairman of the Senate Interstate Commerce Committee, proposing an amendment to Section 316 of the Federal Communications Act which would have changed the language of that Section in such a manner as to refer expressly to programs which offer prizes

to members of the radio audience selected in whole or in part by lot or chance. The suggested legislation was not adopted.

9. Exhibit E-1 hereto annexed is a true copy of a letter dated February 19, 1940, with enclosures, from Chairman Fly to the Attorney General, concerning certain radio programs alleged to be in violation of the Communications Act. Exhibit E-2 hereto annexed is a true copy of the Attorney General's reply to the Commission's reference.

27 10. Exhibit F-1 hereto annexed is a true copy of a letter dated March 29, 1940, with enclosures, from Chairman Fly to the Attorney General, concerning a radio program entitled "Dixie Treasure Chester." Exhibit F-2 hereto annexed is a true copy of the Attorney General's reply.

11. Exhibit G-1 hereto annexed is a true copy of a letter dated March 29, 1940, with enclosures, from Chairman Fly to the Attorney General, concerning a radio program entitled "Sear's Grab Bag." Exhibit G-2 hereto annexed is a true copy of the Attorney General's reply.

12. Exhibit H-1 hereto annexed is a true copy of a letter dated March 29, 1940, with enclosures, from Chairman Fly to the Attorney General, concerning a radio program entitled "Especially For You." Exhibit H-2 hereto annexed is a true copy of the Attorney General's reply.

13. Exhibit I-1 hereto annexed is a true copy of a letter dated March 29, 1940, from Chairman Fly to the Attorney General, concerning the radio program "Mušico." Exhibit I-2 hereto annexed is a true copy of the Attorney General's reply. Exhibit I-3 hereto annexed is a true reproduction of continuity copy for the Mušico program broadcast over radio station WGN, Chicago, on February 16, 1940.

14. Exhibit J-1 hereto annexed is a true copy of a letter dated March 29, 1940, from Chairman Fly to the Attorney General concerning a radio program entitled "Songo." On information and belief, Songo was very similar to Mušico; cards were distributed within the service area of the station so that listeners might check the songs broadcast. Exhibit J-2 hereto annexed is a true copy of the Attorney General's reply.

28 15. Exhibit K hereto annexed is a written transcription of a typical broadcast of "Stop the Music" (Radio) and of "Stop the Music" (television) which were presented on June 22, 1952, and April 17, 1952, respectively.

G. B. ZORBAUGH.

Sworn to before me this 19th day of September 1952.

[SEAL]

LORANE M. SCHIFF,  
Notary Public.

Lorane M. Schiff, Notary Public, State of New York, No. 24-8807375.

Qualified in Kings County. Certified in the following offices: County Clerk: New York County; Register: New York, Kings, Queens, Bronx Counties.

Commission expires March 30, 1954.

29

*Exhibit A to affidavit*

In the Circuit Court of Peoria County

Equity no. 21368

CLEF, INC., A CORPORATION, PLAINTIFF

v.

PEORIA BROADCASTING COMPANY, A CORPORATION, DEFENDANT

STATE OF ILLINOIS,

*County of Peoria, ss:*

COMPLAINT

Clef, Inc., a Corporation, Plaintiff, by Quinn, Quinn & O'Hern, its attorneys, complaining of Peoria Broadcasting Company, a Corporation, Defendant says that:

1. Plaintiff, Clef, Inc., is an Illinois corporation with its principal place of business in Chicago, Illinois.

2. Defendant, Peoria Broadcasting Company, is an Illinois corporation with its principal place of business in the City of Peoria, County of Peoria and State of Illinois.

3. Plaintiff owns and controls a certain game or advertising arrangement which is familiarly known as Mu\$ico (which is hereinafter more particularly described) as to which Plaintiff, as assignee, has applied for a patent, as well as for registration of the trade-mark "Mu\$ico," and as to which it owns all interest in a certain copyright originally taken in the name of John H. Farwell, 1938, relating thereto. Plaintiff further avers that no other person, firm or corporation has any rights in or to said game other than such as result from authorized use with the consent of Plaintiff.

4. Defendant, Peoria Broadcasting Company, owns, operates and maintains in and near the City of Peoria, Illinois, a certain radio station and transmission facilities familiarly known  
30 by the call letters of Station WMBD. Plaintiff further avers that as part of the service furnished by Defendant, it offers the use of its radio station facilities to the general public for advertising purposes.

5. On September 11, 1939, the Plaintiff, acting by and through its agent, H. W. Kastor & Sons Advertising Company, a Corporation entered into a written agreement with Defendant, acting by and through its duly authorized agent, Free & Peters, Inc., a Corporation for the use of the facilities of the Defendant in the presentation of a thirty-minute weekly program employing the game of Mušico to advertise the products of Kroger Grocery & Baking Company, a Corporation, pursuant to an express agreement on the part of Plaintiff to furnish such service to said Kroger Grocery & Baking Company, a Corporation. Plaintiff further avers that as much of the said contract between Plaintiff and Defendant as is relevant to the determination of this case is as follows:

<i>Length of broadcast</i>	<i>Hour</i>	<i>Days</i>	<i>Times per week</i>	<i>Total number times</i>
30-minute program	8:30 p. m. to 9:00 p. m.	Fridays	1	13

Commencement date September 22, 1939.

Expiration date December 15, 1939.

Program Material Arrangements.

Mušico program.

Continuity and complete instructions will be sent by program department.

Plaintiff further avers that by and through its agent hereinabove referred to, it furnished material for the production of said program during all of the weekly Friday periods specified therein and is ready, willing and able to furnish all such programs, continuity and complete instructions for the Friday programs under the terms of the said contract which have not yet  
31 been presented commencing with November 24, 1939, and terminating on December 15, 1939. Plaintiff likewise avers that it has paid or has caused to be paid all sums or charges for said radio broadcasts which were required to be paid by the terms of said contract, and is ready, willing and able by and through its agent hereinabove referred to to continue to do all things required by it to be done under the terms of said contract, and to make or cause to be made all payments required to be made by it under the terms of said contract for the purpose of procuring the broadcast facilities at the periods stated in such contract on the Fridays which fall on November 24, 1939, upon December 1, 1939, upon December 8, 1939, and upon December 15, 1939. Plaintiff further avers that by and through its agent herein referred to it has tendered to Defendant all payments required to be made by it under the terms of said contract for the unexpired portion thereof, and has offered to fully perform all things required by it to be done pursuant thereto.

6. The program which Plaintiff has presented and which has heretofore been broadcast during the periods specified in the contract between Plaintiff and Defendant and which is herein for ready reference referred to as the "Mu\$ico" program, and relevant matters incident thereto, is described as follows:

a. Cards known as "Mu\$ico" cards in the form of the card hereto attached and expressly made a part hereof and marked "Exhibit A" are printed and produced by the Plaintiff each week and are distributed in all Kroger Stores in the vicinity of the City of Peoria, Illinois, and in the WMBD broadcast area, and

are likewise distributed generally in such communities, and, upon request directed to radio Station WMBD and to any Kroger store in the broadcast area. Persons desiring cards are not required to purchase anything, and in fact are not required to come to the Kroger store or any other point of distribution, but may obtain cards at such distribution points. Cards are likewise distributed house to house in the broadcast area.

b. As is shown by Exhibit A hereto attached, each of said cards contains five rows with five songs printed in each of the rows, making in all a total of twenty-five songs aligned in the five parallel rows on each card. During the course of the program approximately eighteen songs are played, and radio listeners thereupon attempt to identify the songs, (of which only the melody is played), by the title of the song, and, if any such listener has a card, such listener then checks the song title on the card in his possession if such song title appears on such card. It is not necessary, however that a listener to the program have a card in order to participate. He may, if he possesses the requisite skill make a written notation of each of the titles of the songs which are played, and transmit such written notation, together with a slogan of the character hereinafter referred to, and will thus be entitled to participate equally with the holder or holders of any card which shall be transmitted to the radio station with the slogan as hereinafter stated.

c. All cards distributed are potential winners, and the skill of each participant in the game both in recognizing the songs when and as played and in writing the slogan as specified in Rule 7 on Plaintiff's Exhibit "A" hereto attached is the only basis for the making of the awards referred to.

d. If a participant correctly recognizes song titles and checks off songs which are played during the broadcast to complete rows 2, 4 or 5 on the card held by the participant (of the character shown in Exhibit A), any such participant is entitled to receive, free of charge, a large shopping bag filled with groceries upon presentation of such winning card to any Kroger store

in the broadcast area. If a participant correctly checks song titles in any single row, or if such participant has no card and correctly notes in writing the song titles as played during the broadcast, any such participant may (upon writing his slogan in ten words or less, completing the sentence "I like Kroger Hot-Dated Coffee because -----"), participate in the awarding of four cash prizes weekly, the first prize being \$20.00, the second \$15.00, the third \$10.00 and the fourth \$5.00 in cash. The only basis of the selection of winners of such prizes is the skill of the participant in accurately recognizing the song titles from listening to the melodies as played, and in devising the slogan referred to. Each card presented is a potential winner, and there are no blanks. Any listener whether possessed of a card or not, if able to recognize the song titles, may participate in the awards.

7. Defendant refuses to perform its contract to furnish the radio facilities referred to in this complaint for the broadcasting of the program herein referred to on November 24, 1939, on December 1, 1939, on December 8, 1939, and on December 15, 1939, unless compelled to do so by order of Court. Defendant assigns no other reason for its refusal to perform said contract other than the nature of the program described in this Complaint which it contends violates Federal laws relating to broadcasts and  
34 certain Federal postal laws. Plaintiff avers that there is no legal or equitable reason or justification for the arbitrary refusal of Defendant to furnish the radio facilities contracted for and to perform its agreement with Plaintiff.

8. Plaintiff further avers that it has made preliminary arrangements to merchandise its Mu\$ico program in other areas in the United States of America, and that if it is not permitted to fulfill its undertaking to broadcast its Mu\$ico program on WMBD upon the said November 24, 1939, December 1, 1939, and December 8, 1939, and December 15, 1939, as provided for in its contract, it will suffer irreparable injury in its inability to sell or produce its said program in other areas in the United States.

9. Plaintiff further avers that the service and broadcasting facilities of Defendant through its radio station WMBD is unique and cannot be obtained elsewhere; that said station is the only radio station in the City of Peoria, Illinois; that great numbers of people have become familiar with the Mu\$ico program as presented on said radio station; that it has been announced that said program will continue until December 15, 1939; and that the cessation of said program through arbitrary action of Defendant as herein stated for the succeeding four Fridays will cause irreparable injury to Plaintiff, and may result in the destruction of the merchantable value or saleability of the Mu\$ico program

which is Plaintiff's only valuable asset, and that the amount of damage which would be incurred by Plaintiff as a result thereof would be impossible to ascertain.

10. Plaintiff is without adequate remedy in the premises except in a Court of equity.

35 Wherefore Plaintiff demands judgment:

I

That Defendant be required to specifically perform its contract with Plaintiff and to furnish radio broadcasting facilities to Plaintiff, acting through its authorized agent, for the thirty-minute period commencing at 8:30 p. m. and continuing until 9:00 p. m. on Friday, November 24, 1939, on Friday, December 1, 1939, on Friday, December 8, 1939, and on Friday, December 15, 1939, for the presentation of its Mu\$ico program advertising Kroger products as set forth in this Complaint and as heretofore performed and presented over the radio station WMBD operated by Defendant in the City of Peoria, Illinois.

That Plaintiff may have such other and further relief as may be just and equitable in the premises.

CLEF, INC.,

By QUINN, QUINN & O'HERN,

*Its Attorneys.*

QUINN, QUINN & O'HERN,

*Attorneys-at-Law,*

*1104 Lehmann Building,*

*Peoria, Ill.*

*Exhibit A to Musico Complaint**Fill across a row. You may win a prize in***M U S I C O**TRADE  
MARK

Copyright 1938, John H. Barwell Claf, Inc., Patent Applied For.

MOON GLOW	EL RANCHO GRANDE	DIRAH	DARLING MELLIE OREY	NEVER IN A MILLION YEARS
ROW ONE	FILL A ROW ACROSS			
SWEET SUE	ON A BICYCLE BUILT FOR TWO	CARIACA	JUST AROUND THE CORNER	COMIN' ROUND THE MOUNTAIN
ROW TWO	FILL A ROW ACROSS			
Carry Me Back to Ol' Virginia	SWEET LEILANI	GO FLY A KITE	POOR BUTTERFLY	TURKEY IN THE STRAW
ROW THREE	FILL A ROW ACROSS			
TEA FOR TWO	MY LAST GOODBYE	ILLINOIS LOYALTY	A MAN AND HIS DREAMS	BETTY CO-ED
ROW FOUR	FILL A ROW ACROSS			
RAIL TO THE GRANDE	MOON INDIOS	WHAT'S NEW	GOODNIGHT SWEETHEART	FALLEN LEAF
ROW FIVE	FILL A ROW ACROSS			

**This is your MUSICO score card**

F 1056

**\$50 in cash prizes, also bags of groceries.**

Listen in every Friday night from 8:30 to 9:00, Station WMBD (1440 on your dial) Peoria, Illinois. This fascinating game is sponsored by your Kroger Stores. This card is good only for the broadcast of November 24th. Get new card next week. No purchase is required in order to obtain a MUSICO card. SEE OTHER SIDE FOR RULES OF THIS FASCINATING GAME



### Rules—How to win -MUSICO PRIZES

1. Listen every Friday night at 8:30 to 9:00 P.M. to Station WMBD (1440 on your dial) Peoria, Illinois.
2. As each song is played identify it and check title on this score card.
3. Listen carefully to the radio program and follow instructions as given by the announcer.
4. MUSICO score cards are distributed by your local Kroger Store or may be obtained at Station WMBD. New score cards for next week's program will be distributed starting each Saturday.
5. This is a game of skill. Every card is a potential winner. There are no blanks. No purchase or obligation of any kind is required to obtain a card.
6. Employees of Kroger Grocery & Baking Co. or their families are not eligible for prizes.
7. If you fill in any row across correctly you may win grand prize of \$25.00 by simply writing "most unique and apt" slogan—I like Kroger Hot-Sated Coffee because



(In words or less)  
Prize winners give Kroger Grocery & Baking Co. permission to use name, address, testimonial and/or slogan submitted for advertising or publicity purposes.

Name \_\_\_\_\_

Address \_\_\_\_\_

Cards must be mailed to WMBD MUSICO Peoria, Ill. on next day—Saturday following broadcast. Duplicate prizes awarded in case of ties. Decision of judges is final.

**DRINK KROGER'S HOT DATED  
FRENCH BRAND or  
SPOTLIGHT COFFEE**  
**SAVE UP TO 10¢ A POUND**

37

*Exhibit A to affidavit*

In the Circuit Court of Peoria County

Equity No. 21638

CLEF, INC., A CORPORATION, PLAINTIFF

v.

PEORIA BROADCASTING COMPANY, A CORPORATION, DEFENDANT

STATE OF ILLINOIS,

County of Peoria, ss:

#### DECREE

This matter having come on to be heard upon the Complaint of Clef, Inc., a Corporation, Plaintiff, and the Answer of Peoria Broadcasting Company, a Corporation, Defendant, and the Motion to Strike said Answer on behalf of the Plaintiff, and the Court having heard the arguments of counsel and being fully advised in the premises, having heretofore stricken the Answer of said Defendant for legal insufficiency, and having found that the program specifically described in the Complaint, known as the "Musico" program, does not violate any Federal Statutes or those Federal Statutes specifically cited as 47 U. S. Code 316,

18 U. S. Code 336 and 18 U. S. Code 387, and the Defendant, by its counsel, in open court having elected to stand by its Answer, and having admitted and confessed in such Answer that all of the allegations of the Complaint are true and correct, and having again admitted in open court that all of said allegations of the Complaint are true and correct, and the Court upon consideration thereof, having heard the arguments of counsel for the respective parties, finds that it has jurisdiction of the subject matter and of

the parties hereto, and that the matters and things set forth in said Complaint are true and correct. The Court further finds that no consideration of any kind is required, or derived, directly or indirectly from any participant in such Mu\$ico game and radio program described in the Complaint, and that such game, as described in said Complaint, constitutes a game of skill and not a game of chance. The Court further finds that the Mu\$ico game and the radio program described in the Complaint do not violate any statutes or laws of the United States of America, and that the contract relating thereto between Plaintiff and defendant should be specifically enforced.

It is therefore ordered, adjudged and decreed by the Court that the Defendant, Peoria Broadcasting Company, a Corporation, be and it is hereby required and directed to specifically perform its contract with Plaintiff, Clef, Inc., a Corporation, acting through its authorized agent or agents, and to furnish radio broadcasting facilities to said Plaintiff, acting through its authorized agent or agents, for the thirty minute periods commencing at 8:30 p. m. and continuing until 9:00 p. m. on Friday, November 24, 1939, on Friday, December 1, 1939, on Friday, December 8, 1939, and on Friday, December 15, 1939, for the presentation of Plaintiff's Mu\$ico program advertising the products of Kroger Grocery & Baking Company, a Corporation, in the manner as provided by contract between said parties, and as specifically set forth in the Complaint in this cause.

Enter:

JOSEPH E. DAILY,  
*Circuit Judge.*

O. K. as to form:

CHARLES V. O'HERN,  
JAY J. ALLOY,  
*Counsel for Plaintiff.*  
H. D. MORGAN,  
*Counsel for Defendant.*

COMPTON ADVERTISING, INC.,  
February 24, 1950.

Mr. SAUL MINDEL,  
*Office of the Solicitor,  
Post Office Department, Washington, D. C.*

DEAR MR. MINDEL: Attached is the outline for the "Mr. Heartbeat" contest on the "Truth or Consequences" program sponsored by Duz, which is manufactured by Procter and Gamble.

We discussed this over the telephone on Friday, February 24, and you requested this outline which covers the details you requested. You will please note that special announcements are made during the program for listeners to send their contributions directly to the Heart Association either Nationally or locally, tying in directly with the National Drive for funds toward the Heart Association.

We would appreciate your approval so that we can start this by Saturday, March 4.

Cordially,

(S) DONALD J. FINLAYSON.

DJF: mb.

40

FEBRUARY 24, 1950.

"TRUTH OR CONSEQUENCES"

"MR. HEARTBEAT" CONTEST

Herewith are the details of the "Mr. Heartbeat" Contest to be featured on "Truth or Consequences" in honor of the Heart Association's fund raising campaign:

1. Listeners will be asked by Ralph Edwards to send a postal card with their name, address, and phone number to "Truth or Consequences."

2. Each Saturday, at the time of broadcast, three cards will be selected by a prominent motion picture star. The sender of the card selected will then be phoned and asked the identity of "Mr. Heartbeat." Clues as to the mystery man's identity will be furnished periodically as the contest progresses.

3. The individual furnishing the correct identity will win cash and merchandise prizes.

4. In addition to furthering the Heart Association's campaign, special announcements will be made weekly asking the listeners to contribute generously to the Heart Association's fund. Listeners will be asked to send their contributions directly to the Heart Association, and to give generously wherever they see the big red plastic heart displayed.

5. To prevent misdirection of contributions an announcement such as, "Be sure to send your contributions directly to the Heart Association and not to "Truth or Consequences" will be made weekly wherever funds are solicited.

41

*Exhibit B-2 to affidavit*

Address Reply to "The Solicitor" and refer to initials and number SJM: cl.

POST OFFICE DEPARTMENT,  
OFFICE OF THE SOLICITOR,  
Washington 25, D. C., March 2, 1950.

MR. DONALD J. FINLAYSON,  
*Compton Advertising, Inc., Rockefeller Center,  
630 Fifth Avenue, New York 20, New York.*

DEAR MR. FINLAYSON: This will acknowledge your letter of February 24, 1950, transmitting an outline of a "Mr. Heartbeat" prize plan to be conducted on the "Truth or Consequences" program for the American Heart Association.

According to the outline, those desiring to participate will be invited to send to Ralph Edwards postal cards bearing their respective names, addresses, and telephone numbers, and each Saturday during the broadcast three cards will be selected for a telephone call, the person called then to have an opportunity to attempt to identify "Mr. Heartbeat," prizes to be given to the one who does so correctly.

Listeners will be encouraged to contribute to the Heart Association campaign:

"\* \* \* Listeners will be asked to send their contributions directly to the Heart Association, and to give generously wherever they see the big red plastic heart displayed.

"To prevent misdirection of contributions an announcement such as, 'Be sure to send your contributions directly to the Heart Association and not to "Truth or Consequences,"' will be made weekly wherever funds are solicited."

During your discussion with this office when you telephoned yesterday, you stated that listeners will be clearly instructed, in addition to other statements made to them, "Do not send contributions to 'Truth or Consequences,'" and that it will be made clear to them that their chances of being selected for a call are in no way affected by their making, or failure to make, a contribution.

Upon the above conditions, matter relating to the plan will be accepted for mailing insofar as Section 36.6, Postal Laws and Regulations of 1948, is concerned.

Very truly yours,

(S) Frank J. Delany,  
FRANK J. DELANY,  
*Solicitor.*

APRIL 28, 1949.

MR. FRANK J. DELANY,  
*Office of the Solicitor,*

*Post Office Department, Washington 25, D. C.*

DEAR MR. DELANY: We will appreciate having an advisory opinion from you as to whether material relating to a television program hereinafter described would be acceptable for mailing under Section 601 of the Postal Laws and Regulations of 1940.

We have been broadcasting a radio program entitled "Stop the Music" which provides for listener participation by telephone. Prior to each broadcast certain names are selected at random from our collection of telephone books. During the program the persons chosen are telephoned and asked to identify a musical selection which is being played by the orchestra. If the participant identifies the selection correctly he receives an award of an article of merchandise, and an opportunity to identify another musical selection which is known as the "mystery melody." If he identifies the "mystery melody" he receives additional articles of merchandise.

The "Stop the Music" program has now been adapted for television and will be broadcast over our television facilities under the sponsorship of P. Lorillard Co. and the Admiral Corporation, commencing May 5, 1949. Because the television program will be available only to persons in the area serviced by our television facilities, connected by coaxial cable, we cannot select the names of participants at random from telephone books. We have, therefore, secured lists of television set owners, in the areas where the program will be available, compiled by Hooper, Inc. and another furnished by Television Guide but, as you know, such lists are not necessarily complete. Consequently, we propose to announce in advertisements and by other means that persons who wish to participate in the "Stop the Music" program may mail a card giving their names and telephone numbers, which cards will be used to complete the lists from which names of persons to be telephoned will be selected at random.

When it became evident to us several days ago that it would be necessary to supplement our lists in this manner, I telephoned Mr. Mindel of your Department, with whom we have discussed similar problems in the past, to discuss the problem with him. On the basis of our conversation Mr. Mindel agreed with our opinion that the scheme in question is not a lottery, and, therefore, material concerning the plan would be acceptable for mailing. He did, however, ask that we present the problem to you in writing in order to secure a written confirmation of that opinion.

We shall appreciate your early consideration of this matter.

Very truly yours,

G. B. ZORBAUGH.

43

*Exhibit C-2 to Affidavit*

POST OFFICE DEPARTMENT,  
OFFICE OF THE SOLICITOR,  
Washington 25, D. C., May 9, 1949.

Mr. G. B. ZORBAUGH,  
American Broadcasting Co., Inc.,  
7 West 66th Street, New York 23, New York.

DEAR MR. ZORBAUGH: This will acknowledge your letter of April 28, 1949 (received in this office May 5), relative to the conduct of "Stop the Music" as a television show.

According to your letter, it is proposed to announce in advertisements and by other means that persons who wish to become eligible for a call during the program "may mail a card giving their names and telephone numbers, which cards will be used to complete the lists from which names of persons to be telephoned will be selected at random."

Submission of the postal cards would not be regarded as rendering matter relating to the scheme nonmailable under the postal lottery statute.

However, the program is one concerned primarily with use of television and radio facilities, and whether or not its operation in the manner proposed would be regarded by the Federal Communications Commission as conflicting with 18 U. S. C. 1304 is a matter for determination by that agency.

Very truly yours,

Frank J. Delany,  
FRANK J. DELANY,  
*Solicitor.*

44

*Exhibit D to affidavit*

[From hearings before the Committee on Interstate Commerce on S. 814, 78th Cong., 1st Sess. (1944)]

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D. C., December 30, 1943.

HON. BURTON K. WHEELER,  
Chairman, Interstate Commerce Committee,  
United States Senate, Washington, D. C.

MY DEAR CHAIRMAN WHEELER: I note in reexamining the testimony before your committee on S. 814 that there was a good deal of discussion of the so-called money give-away programs to which I did not allude in my testimony.

The problem of money give-away programs is a very troublesome one in broadcasting. This type of radio program depends for its popularity on the holding out to the listener of a chance that he might be awarded money or other prize rather than on

the excellence of the program itself. This type of program has been continually increasing to the serious deterioration of program service. The attached article from the Washington Post of December 26, 1943, will give you a slight idea of the type of problem involved.

Under the present section 316 of the Communications Act, the Commission has been unable to deal adequately with the problem. I believe that the matter is serious and important enough to warrant action by Congress at this time. I am therefore enclosing a proposed draft of a new section 316 which I believe will prevent most of the programs that I have indicated. Under this proposed statute, programs of the type of Information Please or the Qu. Kids, Dr. I. Q., Take It or Leave It, etc., where prizes are awarded will not be affected. It will still be permissible to offer prizes to members of the listening public who make a substantial contribution to the program by furnishing questions to be asked of participants and it will still be lawful to offer prizes to participants in the program where the prizes depend upon the ability of the participants to answer questions put to them. This type of program, in my opinion, is unobjectionable since the public must be attracted by the quality of the radio program itself and not by the possibility of receiving a prize. The proposed statute is directed at the type of programs like Captain Cash, etc., mentioned in the attached article, where members of the radio audience not in the studio are selected by lot or chance to win a prize if they can show that they were listening to the particular program. Under this type of program, listeners are attracted not by the quality of the program but simply by the hope of being awarded a valuable prize simply by listening to a particular program. That is not good broadcasting.

Sincerely yours,

JAMES LAWRENCE FLY,  
*Chairman.*

45 [From the Washington Post, December 26, 1943]

# **BANK NIGHT IS GONE, BUT MONEY GIVE-AWAY BY RADIO STILL FLOURISHES**

(By Marjorie Kelly)

If one fine morning you call up your wife, and she answers not with "Hello" but with "Gooygloop Hand Lotion works wonders on rough hands, red hands," take heart. Maybe she isn't crazy. She might just be listening to WWDC.

Password Please has one of the more insidious formulas among money-give-away programs. The "password" is the program's commercial; the announcer calls a telephone number without an-



nouncing the number over the air. If the person called answers with the password, he gets the jackpot. So that all over the city hundreds of people whose telephones happen to ring at that moment startle unsuspecting solicitors, bill collectors, and bosom friends by spiling a commercial at them. Neat, isn't it?

#### STATION AND SPONSOR BOTH PROFIT

Why the money give-away racket should continue to flourish on minor-league radio stations when its counterpart in modern culture, bank night at the movies, has passed into the limbo of institutions the fickle American public has tired of is a question. But flourish it does; though theaters no longer vie for patrons with combinations of Dorothy Lamour and a \$90 jack pot, radio stations still find it profitable to bribe listeners to listen. And it is profitable—both to station and sponsor. The station gets its sizable share of the take; and sponsors find their sales boosted most satisfactorily by spots on these shows.

There are five on local stations—Captain Cash, Mr. Moneybags, Pin Money, Password Please, and Walter Compton's Magic Dollars.

Each has its own formula for selecting the winners, but they have in common the habit of asking the listener a question, or making him repeat a password. This serves a double purpose. The question or password may involve the sponsor's name, thus increasing the value of spot announcements on these programs. Also, with the introduction of a question which must be answered the program cannot be called a lottery. The questions may be so easy that a 3-year-old couldn't muff them—"What flavor is lemon pie?" or "What do you want for Christmas?"—but so long as they are asked the program is not a lottery.

With approximately 179,000 home telephones in the District, the odds are roughly 179,000 against you winning on any one program.

46 You get better odds in the numbers game—1,000 to 1.

Not that we recommend that either, we hasten to add.

But despite the odds, people do listen faithfully, week in and week out, in hopes of a rake-off that would pay the mortgage.

One woman called Jay Caldwell at WOL to tell him that she had listened every morning for months, and he had never called her. So, recalling the number of calls she had had while she was in the bathtub, she took to soaking every morning during Caldwell's period on the air. But even then the laws of chance didn't favor her.

#### COMES TO HER SENSES IN TIME

Norman Reed, who is Captain Cash and master of ceremonies on "Password Please" as well, tells of one woman who wrote that



when she heard her number announced she was so excited she started running around the room and couldn't remember where the telephone was. Just before the final ring (seven rings are allowed on this program) she came to her senses sufficiently to pick up the phone.

Norman Brokenshire tells a story on a gang of enterprising people who thought up the idea of listening every morning and calling up the persons whose names were announced over the air. (On "Pin Money" the name is announced and then recordings are played during a 10-minute interval while Brokenshire waits for the chosen individual to telephone him.) These ingenious ones would locate the person whose name was announced and say to him: "I know how you can get \$20. If you'll give me \$5."

Brokenshire fixed the booblers by announcing over the air that if that happened to a listener, he should take the tip but not reward the tipster.

Norman Reed's long experience with money give-aways has borne fruit in a wishful little rhyme which reads:

"Of all sad words of tongue or pen

The saddest are these: 'I wasn't listening just then.'"

47

#### PROPOSED DRAFT FOR A NEW SECTION

##### LOTTERIES AND OTHER SIMILAR SCHEMES

SEC. 316. No person shall broadcast by means of any radio station for which a license is required by any law of the United States, and no person operating any such station shall knowingly permit the broadcasting of, (a) any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes [sic], or (b) any program which offers money, prizes, or other gifts to members of the radio audience (as distinguished from the studio audience) selected in whole or in part by lot or chance. Any person violating any provision of this section shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both, for each and every day during which such offense occurs.

48

#### *Exhibit E-1 to affidavit*

FEBRUARY 19, 1940.

The Honorable, the ATTORNEY GENERAL,  
Washington, D. C.:

MY DEAR MR. ATTORNEY GENERAL:

Pursuant to recent discussion with you I have caused to be assembled and transmit herewith information concerning the

broadcasting of certain programs alleged to be in violation of Section 316 of the Communications Act of 1934, which provides a penalty for the broadcast of information concerning a lottery, gift enterprise or similar scheme dependent in whole or in part upon lot or chance.

The following documents are attached hereto:

In re: The Wichita Falls Broadcasting Company, Radio Station KWFT, Wichita Falls, Texas, continuity of programs broadcast by said station for Mead's Bakery;

In re: Big Spring Herald Broadcasting Company, Radio Station KBST, Big Spring, Texas, photostatic copy of a letter from Joe A. Faucett, County Attorney, Big Spring, Texas, which shows the continuity of a program broadcast by said station for Mead's Bakery; and

In re: National Broadcasting Company, Radio Station WEA, New York, N. Y., continuity of a program broadcast by said station, and associated stations, known as the "Red Network" of the National Broadcasting Company, for the distributors of a proprietary remedy known as "Tums", said program being generally known as the "Pot of Gold".

These programs are being currently broadcast by the above designated stations with the exception of Station KWFT. The licensee of that station has advised the Commission that it has discontinued broadcasting the program for Mead's Bakery.

These matters are transmitted to you for your consideration and such action as you may deem appropriate. Please be assured that this Commission will render any assistance in these matters which you may desire.

Sincerely yours,

JAMES LAWRENCE FLY,  
*Chairman.*

Enclosures.

49 THE STATE OF TEXAS,  
*County of Wichita:*

Before me, the undersigned authority, on this day personally appeared Joe B. Carrigan, known to me to be a resident, credible citizen of Wichita Falls, Texas, and the President of Wichita Broadcasting Company, a corporation, who, after being by me first duly sworn, did upon oath say:

1. That on the 20th day of November 1939, Mead's Bakery entered into a contract in writing with Radio Station KWFT for partial sponsorship of the program "Keep Fit to Music" to be broadcast by Wichita Broadcasting Company over its Station KWFT in Wichita Falls, Texas, at 10:30 a. m., five times each

week, Monday through Friday on the basis of the terms set out in the contract.

2. That there is attached hereto and made a part hereof for all purposes, all contracts and agreements entered into in connection with the said broadcasts.

3. There is attached hereto and made a part hereof for all purposes an exact copy of all announcements made on said broadcast. There is one announcement made in connection with the program each day and two announcements are alternated, only one being used on any one broadcast; that the announcements do contain all of the steps involved in the purchase of a loaf of Mead's Bread from a housewife for a consideration of \$5.00, except the fact that the principal purpose of the visit of the representative of Mead's Bakery to a home in Wichita Falls is to demonstrate products of Mead's Bakery.

4. There is furnished herein, by attaching hereto, a list of the names and addresses from all persons from whom a representative of Mead's Bakery has purchased a loaf of Mead's Bread for \$5.00.

JOE B. CARRIGAN.

Sworn to and subscribed before me, the undersigned Notary, by Joe B. Carrigan, this 1st day of January 1940.

LUCILE B. FRALEY.

50

[COPY]

# ADVERTISING ORDER

RADIO STATION KWFT, WICHITA FALLS, TEXAS

Order No.-----

Date Nov. 18, 1939.

You are hereby authorized to furnish to the undersigned the following Broadcasting Service from Radio Station KWFT 1 15-minute program daily Monday thru Friday 10:30-45 a. m. "Keep Fit To Music"; 1 50-word announcement daily Mon. thru Fri.; 4 50-word anns. Sat.

Rate \$25.00 per wk. for 15-min. program; 45.00 per mo. for announcements.

Commencing November 20th, 1939, and ending indefinite.

The total cost of aforesaid advertising to the undersigned shall be \$----- payable at the office of Radio Station KWFT in Wichita Falls, as follows: regular.

This order shall not be in force until signed by Manager of Radio Station KWFT on or before the 10th of the month follow-

ing month in which all or a portion of the services have been rendered.

RADIO STATION KWFT,  
By (Signed) CHAS. E. CLOUGH,  
*Salesman Commercial Manager.*  
By \_\_\_\_\_  
*Manager.*

Firm:

MEAD'S BAKERY,  
By (Signed) W. L. MEAD.

(See other side for conditions of acceptance.)

#### CONDITIONS OF ACCEPTANCE OF ALL ORDERS

1. Station reserves the right to reject any program or announcements and/or the personnel of any program without any liability therefor.

2. This agreement may be terminated by either party by giving the other two weeks' written notice, unless otherwise stipulated on the face of this order. If the client terminates the agreement, he will pay the station according to the station's published rates for the lesser number of periods, for all services previously rendered by the station.

3. All service rendered by the station is subject to the terms of any licenses held by the station and also to all Federal, State and Municipal laws and regulations now or hereafter in force.

4. Client agrees to furnish copy at least 24 hours before time of broadcast, and if client fails to do so, station is authorized to prepare such copy to be broadcast, and in such event, the client shall make payment for such time at the rate specified.

5. The standard card rates of KWFT to be payable for all broadcasts until a quantity discount as provided in card rates shall have been earned, at which time the designated credit shall be allowed on bills for subsequent broadcasts. KWFT reserves the right to substitute a sustaining non-commercial program or a network program of any kind, in lieu of any local commercial program, and also reserves the right to reschedule local commercial program so deleted to any other period in same day, if possible, and if not possible to reschedule program contracted for herein, or completely delete same and make no charge therefor.

All the Conditions of This Contract are Contained Herein and no Verbal Agreement Shall Alter These Conditions in Any Way

ADVERTISING ORDER

RADIO STATION KWFT, WICHITA FALLS, TEXAS

Order No. -----

Date July 10, 1939.

You are hereby authorized to furnish to the undersigned the following Broadcasting Service from Radio Station KWFT 3 50-word announcements—Each week day excepting Sunday.

Time—Various.

Rate \$25.00 per week.

Commencing July 15, 1939, and ending July 14, 1940.

The total cost of aforesaid advertising to the undersigned shall be \$1,300.00 payable at the office of Radio Station KWFT in Wichita Falls, as follows: Regular.

This order shall not be in force until signed by Manager of Radio Station KWFT on or before the 10th of the month following month in which all or a portion of the services have been rendered.

RADIO STATION KWFT,  
By (Signed) CHAS. E. CLOUGH,  
*Salesman Commercial Manager.*  
By ———, *Manager.*

Firm:

MEAD'S BAKERY,  
By (Signed) W. L. MEAD.

(See other side for conditions of acceptance.)

CONDITIONS OF ACCEPTANCE OF ALL ORDERS

1. Station reserves the right to reject any program or announcements and/or the personnel of any program without any liability therefor.

2. This agreement may be terminated by either party by giving the other two weeks' written notice, unless otherwise stipulated on the face of this order. If the client terminates the agreement, he will pay the station according to the station's published rates for the lesser number of periods, for all services previously rendered by the station.

3. All service rendered by the station is subject to the terms of any licenses held by the station and also to all Federal, State and Municipal laws and regulations now or hereafter in force.

4. Client agrees to furnish copy at least 24 hours before time of broadcast, and if client fails to do so, station is authorized to prepare such copy to be broadcast, and in such event, the client shall make payment for such time at the rate specified.

5. The standard card rates of KWFT to be payable for all broadcasts until a quantity discount as provided in card rates shall have been earned, at which time the designated credit shall be allowed on bills for subsequent broadcasts. KWFT reserves the right to substitute a sustaining non-commercial program or a network program of any kind, in lieu of any local commercial program, and also reserves the right to reschedule local commercial program so deleted to any other period in same day, if possible, and if not possible to reschedule program contracted for herein, or completely delete same and make no charge therefor.

All the conditions of This Contract Are Contained Herein and no Verbal Agreement Shall Alter These Conditions in any way

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## KWFT

## CONTINUITY

Advertiser: Mead's Bakery.

Date-----

Time-----

Type-----

The Mead's Fine Bread Mystery Woman is still causing considerable comment through her continued activities. Has she visited you as yet? You ladies had better be prepared for her, because she may stop at your door at any time—and when she does, she will offer to buy a loaf or part of a loaf of Mead's Fine Bread from you, paying you five dollars for it! Of course, if you don't have the loaf of Mead's Bread, you cannot make the sale to the Mystery Woman. All you need to be sure of is that you have at least part of a loaf of Mead's Fine Bread in your house, so that you can sell it to the Mead's Fine Bread Mystery Woman when she calls at your door. And remember—she will gladly pay you five dollars for it! You may have the opportunity to sell a loaf of bread for five dollars! \* \* \* Listen again tomorrow at this time for your program of KEEP FIT TO MUSIC, brought to you by the makers of Mead's Fine Bread. And remember—To better serve your baking needs, the better bread you need is Mead's!

Time of Broadcast----- Announcer

53

## KWFT

## CONTINUITY

Advertiser: Mead's Bakery.

Date-----

Time-----

Type-----

Everyone is talking about the Mead's Fine Bread Mystery Woman. Have you seen her? She may call at your door today—and if you can show her a loaf or part of a loaf of Mead's Fine Bread in your house, she will gladly pay you five dollars for it!

There is no catch whatsoever about this statement. Just be sure you have at least part of a loaf of Mead's Fine Bread in your home, so that you can show it to the Mead's Fine Bread Mystery Woman when she calls at your door. It will be an exciting experience to sell a loaf of bread for five dollars! . . . Listen again at this time tomorrow for your program of **KEEP FIT TO MUSIC**, brought to you by the makers of Mead's Fine Bread. And remember—To better serve your baking needs, the better bread you need is Mead's!

Time of Broadcast\_\_\_\_\_ Announcer\_\_\_\_\_

54 NAMES OF PERSONS WHO HAVE SOLD A LOAF OF MEAD'S BREAD  
(OR PART OF LOAF) FOR FIVE DOLLARS (TO MYSTERY WOMAN)

Mrs. A. D. Foster, 2207 Bridwell.  
 Mrs. K. O. Thompson, 309 N. Austin.  
 Mrs. Essie Hancock, 1606 Monroe.

55

JOE A. FAUCETT  
COUNTY ATTORNEY  
Howard County  
BIG SPRING, TEXAS, *December 11, 1939.*

Hon. W. A. ABBOTT,  
Inspector, Federal Communications Commission,  
U. S. Terminal Annex Building, Dallas Texas.

**In Re: Radio Station KBST, Big Spring, Texas.**

DEAR SIR: To your request in our conversation this day regarding the Lottery Broadcast of Radio Station KBST, Big Spring, Texas, I herewith submit to you a more detailed statement regarding this matter.

Each day over this station, through spot broadcasts, Mead's Bakery, Big Spring, Texas, has the following announcement, in substance as follows:

**"Here's big news from Meads news about Meads Fine Bread's Mystery Woman. She May call at your door today, and if you can show her a loaf or a part of a loaf of Meads Fine Bread in your house, she will gladly pay you five dollars for it. There is no catch whatsoever about this statement. Just be sure you have at least a part of a loaf of Meads Fine Bread in your home, so you can show it to Mead's Fine Bread's Mystery Woman when she calls at your door. It will be exciting to sell a loaf of bread for five dollars. Watch for Meads Fine Bread's Mystery Woman. She may call on you today: This offer is limited to the Big Spring Territory."**

Thus, you can see that this concern is offering a prize of Five Dollars daily to a person who buys their bread, should this person



by chance have the bread in their possession, should the mystery woman, by chance, call at their door.

56 Mr. Abbott I would appreciate your attention to this matter, as in my opinion it absolutely a violation of your statute, and I know that you can effectively punish this concern as well as the station should you think necessary.

Perhaps you are wondering why I do not file a complaint under the State Lottery Law. Therefore, I wish to make this statement in regards thereto. Should I file such a complaint the defendants could and would easily come to the Courthouse, make bond, and go about their way continuing to run the Lottery, and thus receive the benefits of the publicity that my complaint would give them, and in the end they would only be facing a small misdemeanor complaint under the state law. While, on the other hand, you have it in your power to cause them to be forced to go to Abilene, Texas, under a Federal Warrant (which incidentally scares a sensible man to death), to face a Federal District Judge (not a local kin folks jury), and submit to a thousand dollar fine for each days violation, also the possibility of a forfeiture of the rights of the Radio Station.

Mr. Abbot should your department see this as I do, I would certainly recommend the imposition of a fine on the bakery to say the least, since I have warned them, begged them, and they continue in open defiance.

Perhaps some day the State Courts will wake up and have efficient power, or at least probative force, and at that time I will not have to call for your intervention, but until then I beg to do so. Since you have indicated that your department is interest in this type of case, I have done the right thing in reporting it, therefore, I have that consolation to say the least.

I promise to have you a case for each days violation.

Thanking you in advance for your cooperation, I beg to remain,  
Very truly yours,

JOE A. FAUCETT.

57

STATION WRC, WASHINGTON, D. C.

(8:30 P. M.)

POT OF GOLD PROGRAM

Theme Song

Announcement

Music

HORACE HEIDT. Thank you, and hello, nice people. This is Horace Heidt hardly able to speak from excitement because there is \$1,900 in the Pot of Gold tonight. \$1,900! Boy, oh boy, oh boy, and a wow. And now while we are wondering who's going



to get all that money, we'll start the show with a modern arrangement of "The Merry Wives of Windsor." Gentlemen, to the ladies!

Music

HORACE HEIDT. Here's Ben Grauer, the lad with the \$1,900 voice to tell you about tonight's Pot of Gold.

BEN GRAUER. Thank you, Horace, and I may have a \$1,900 voice all right, but I know a lady with a \$900 dog.

HORACE HEIDT. Say, that's some dog, Ben. Tell us more.

BEN GRAUER. I'll tell you about her and the dog later on. In fact, she's going to be on the show tonight but first let me tell the folks that tonight we want to make an outright gift of \$1,900 in cash to somebody in the United States. Now, this is not a contest of any kind. There is nothing to do. Nothing to buy and no letters to write. All we are going to do is make a telephone call right here from the studio. If that telephone answers, we are going to send immediately by Western Union \$1,900 to the person listed under that telephone number in the phone book which we have here in the studio, or, if for any reason the phone does not answer or the number is not reached when we call, we'll send \$100 anyway and we'll add \$900 to next week's Pot of Gold, making a total of \$2,800 we want to give away as an outright gift on this program next Tuesday night. Now, remember, there is nothing for you to do and if you stay with us you'll find out just how we select that telephone number. Well, that's all I have to say about that, Horace.

58

Music

HORACE HEIDT. Well, Ben, thanks. Say, how about that lady with the \$900 dog?

BEN GRAUER. Not yet, Horace. It's time for music right now and that's your department.

HORACE HEIDT. Okeh. Have it your way. Say, Larry, you know Madame Graver who wrote "Tippi Tin" has written a wonderful new song, "Make Love With a Guitar." How about you singing it for the first time on the air.

LARRY. Horace, I'll consider it an honor to do just that for Madame Graver.

Music

Commercial Announcement

Music

"\* \* \* Now before we start our search for the person to whom we want to give that money, I'm going to pin Ben Grauer down about that lady and the dog story.

BEN GRAUER. Well, there is no need to do that, Horace. Here I am, ready to tell all.

HORACE HEIDT. Well, what's it all about.

BEN GRAUER. Horace, you remember last week we tried to call Miss Lillian Gans out in Marietta, Ohio?

HORACE HEIDT. Yes, but nobody answered.

BEN GRAUER. Well, the lady who didn't answer the phone is standing next to me here and she wants to meet you. Miss Gans, this is Horace Heidt.

LILLIAN GANS. How do you do, Mr. Heidt.

HORACE HEIDT. Well, how do you do, Miss Gans. Say, would you mind telling us what you do.

LILLIAN GANS. Well, I'm a court stenographer, Mr. Heidt, and I am also a writer, and believe it or not, one of my scenarios is entitled "The Pot of Gold."

HORACE HEIDT. Now, that is a coincidence. \* \* \* Say, Ben, now that I have met the charming lady, where does the dog come in?

BEN GRAUER. Well, right here. Miss Gans, would you mind telling Mr. Heidt and the radio audience why you didn't answer your phone last Tuesday?

LILLIAN GANS. Well, you see, my brother and I live together and last Tuesday we were both away from home. My brother returned first and took Michael O'Halloran out for a walk.

BEN GRAUER. And Michael O'Halloran is—

LILLIAN GANS. My terry blue dog. Well, you see, as my brother was out on the porch he thought he heard the phone ringing. He decided it wasn't and went on with the dog.

BEN GRAUER. With the terry blue dog. That was our call.

LILLIAN GANS. That's right. While you were trying to get me, my brother was out walking with the dog.

HORACE HEIDT. With the terry who blew the \$900.

BEN GRAUER. Well, there, Horace, there you have the story of the lady with the \$900 dog.

\* \* \*

We also have here in the studio the Tum's giant selector and Larry Cotton is going to spin the selector so we can pick a volume of the telephone book. All right, Larry, let her go.

There it goes, Horace. There it is. Looks like it's going to be a good spin this time. What is it this time? It's coming down to the big numbers. It's going to stop at one of the big numbers. No, it isn't. It's down to the 120; no, it's down to 10; it's 108.

BEN GRAUER. No. 108, which means that the phone book we are looking for is in Vol. No. 108. Have you got that, Ben?

BEN GRAUER. Sure, I have, Horace.

Music

BEN GRAUER. Now we found the right volume of phone book, so next we want to find a particular page in that volume and the Tums giant selector does it for us. All right, Larry. Let's have it again.

60 Here we go. This one takes a little more time, Horace, but it's slowing down. It's going to slow down now. It's going down to the small numbers. No, it's coming back to the center of the wheel. It's going to stop at 200, I believe. No, it's at the top of the 200's. No, it went across the line and it's 301.

And it's page 301. You see, the selector stopped at No. 301, which means that the person we are after tonight is listed on page 301 in Vol. No. 108, the volume that was selected in our first step. Have you got that, Ben?

BEN GRAUER. Yes, Horace Heidt, page 301 of Vol. 108. I'm checking it right now.

HORACE HEIDT. Okeh, carry on, Ben.

Music

Commercial Announcement

Music

\* \* \* Now, back to that \$1,900. Our first step gave us Vol. No. 108. Our second step gave us page No. 301, so we're ready for the next and most exciting step in the search to select the person on page 301 whom we're going to call on the phone, so we call on the Tums Giant selector again. Larry, let's have the big spin of the evening.

\* \* \* They're off. \* \* \* and it stops on number 7.

BEN GRAUER. Number 7. That means that the person we are looking for is the 7th listing on page 301 in phone book Vol. 108 starting from the top left of the page and counting down to the 7th listing. Of course, we are only interested in what appears in the phone book to be personal listings, not institutions or business firms. Well, we want to make doubly sure about all this for there are \$1,900 involved and that is worth a check and a double check. \* \* \*

Music

Commercial Announcement

Music

61 BEN GRAUER. Okeh, Horace. Everything's checked. Listing 7 on page 301 in phone book Vol. 108 is the one we are after. Suppose you play something, Horace, and I'll put in a phone call right now. "Hello."

## Music

BEN GRAUER. Hello, is this Stamford, Conn., 44598? Well, this is Ben Grauer calling from the Tums "Pot of Gold" program in Radio City, New York. We are sending \$1,900 immediately by Western Union to Mr. Sidney Anthony whose name is listed under this telephone number. Is Mr. Anthony there. Is she Mrs. Anthony? Is she his wife? Well, get her to the phone quick. She'll be awful glad to hear what I've got to tell her. You bet. I don't know how this little boy or girl but she seemed kinda uncertain about what I was saying. Hello, Mrs. Anthony. This is the Tums Pot of Gold program, Ben Grauer speaking. Have you been listening to the radio? Well, have you heard about our Tums Pot of Gold? Yes, you are the lucky person. \$1,900, madam. Yes, madam, you are receiving this outright gift of the Tums people. One thousand nine hundred dollars. Now, I'm not kidding you. How do you feel? Really, I'm—that would be—No, I'm not kidding. There are a lot of people listening to me, if not to you. Tell us, how do you feel? Yeh, you feel fine. Well, you'll feel much better when that Western Union boy comes. Tell us, what does Mr. Anthony do? Is he a businessman? He moves houses! Well, he's got something to move into his house. It will be there in just a few minutes. Our very warmest congratulations and best wishes from the Tums people. You give him the good news when he comes in but have a chair handy for him. Bye-bye, Mrs. Anthony. Well, folks, we did it again. Position No. 7 on page 301 in phone book Vol. No. 108 turned out to be Mr. Sidney Anthony, 374 West Ave., Stamford, Connecticut, whose telephone number is Stamford 44598. The \$1,900 is on its way to Mr. Anthony right now. And, by the way, Vol. 108 contains 2 other communities in addition to that of Stamford and its surrounding territory. Well, Horace, we did it again. How about some music?

## Music

62

*Exhibit E-2 to affidavit*

40315

DEPARTMENT OF JUSTICE,  
Washington, D. C., April 10, 1940.

HONORABLE JAMES LAWRENCE FLY,

*Chairman, Federal Communications Commission,**Washington, D. C.*

DEAR MR. FLY: Reference is made to our letter of February 21, 1940, acknowledging receipt of yours of February 19, 1940, transmitting for such action as the Department may deem appro-

prate certain information concerning the broadcasting of the "Pot o' Gold" and "Mead's Bakery" programs, both of which are alleged to be in violation of Section 316 of the Communications Act of 1934.

After a thorough examination of the material submitted and a careful consideration of the facts presented, the Department has concluded that prosecutive action under Section 316 of the Communications Act of 1934 in these two matters should not be instituted.

Respectfully,

For the Attorney General:

(Signed) O. John Rogge,

O. JOHN ROGGE,

*Assistant Attorney General.*

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*Exhibit F-1 to Affidavit*

MARCH 29, 1940.

The Honorable the ATTORNEY GENERAL,

*Washington, D. C.*

MY DEAR MR. ATTORNEY GENERAL: The Commission is in receipt of information indicating that a program broadcast by Station KRLD, Dallas, Texas, entitled "Dixie Treasure Chest," is in violation of the provisions of Section 316 of the Communications Act of 1934. Attached hereto is a summary of facts concerning this program, together with the continuity thereof.

This matter is transmitted to you for your consideration and such action as you may deem appropriate. Please be assured that this Commission will render any assistance in this matter which you may desire.

Sincerely yours,

JAMES LAWRENCE FLY, *Chairman.*

Attachments.

PWS/ao'd.

65

SUMMARY OF FACTS CONCERNING A PROGRAM KNOWN AS "DIXIE TREASURE CHEST," BROADCAST BY STATION KRLD, DALLAS, TEXAS

KRLD Radio Corporation is the licensee of Radio Station KRLD, Dallas, Texas. The above program was broadcast by Station KRLD on January 10, 17, 24, and 31, 1940. The continuity of one of these programs supplied by the licensee of the station shows in substance as follows:

During the broadcast of the above program a prize of \$25.00 is offered, under conditions hereinafter shown. If no listener

wins the \$25.00 it is carried over to the next week, and the amount to be distributed is cumulative. The continuity of this program supplied by the licensee shows among other things the following:

"Here is the simple procedure we use in giving this cash award from the open treasure chest. \* \* \* We have a Dallas telephone directory here, and from it we will select a residence number—at random. If it is YOUR name, and if you answer the telephone and tell us you're listening to this program, you're eligible to win this handsome cash award of fifty dollars. All you will have to do is answer one simple question which I will ask. \* \* \* and if you answer it correctly, the money will be rushed to your home *by special messenger* as soon as the program is ended!

"All set? Then Here GOES!"

The announcer ad libs, selects number from directory, calls, and if the party called answers the telephone, proceeds approximately as follows:

"Good morning, madam. Are you listening to the Dixie margarine show on KRLD? (If 'No')—I'm awfully sorry, ma'am, because if you had been, you would have been eligible for a fifty dollar cash award! I tell you what I'm going to do. \* \* \* I'd like to send you a pound of Dixie Margarine, with our compliments. \* \* \* try it, and see if it's not the best you've ever used! And be sure to listen to KRLD next week at this same time. Better luck next time!"

The question propounded to the telephone subscriber in this particular program was "What Is the Color of the Border of the Dixie Margarine Package?" If this question had been answered correctly, a prize of fifty dollars in this instance would have been awarded.

It will be noted that the telephone number of the party to be called is selected at random, and the prize will not be awarded unless the party answers and gives a correct answer to the question propounded. The element of chance is found in the manner of selecting the telephone number to be called, whether or not the subscriber will answer, and whether or not the subscriber will be listening to the particular program. The distribution of Dixie Margarine to all parties who are telephoned is likewise dependent upon chance, first in the manner of selecting the telephone number, and second, as to whether or not the party answers the telephone.

Client: Titus Distributing Co.

Product: Dixie Margarine.

Program: Dixie Treasure Chest.

Date: January 17, 1940.

Announcer: Kuler.

Continuity: Geo.

Production:

Time: 9:45 a. m.

SOUND. Telephone Rings:

ANNOUNCER. That ring is for you madam! And I hope you're at home, because we're about to open THE DIXIE TREASURE CHEST!

THEME. W 106-1 (Evolution of Dixie—start on drum-roll—fade:) (aprx. 30 sec.).

ANNOUNCER. The Dixie Treasure Chest, ladies! With a cash award of Fifty dollars for some lady who's at home listening to this broadcast, and who will answer just one question your Dixie announcer will ask! Last week's award of \$25.00 was carried over to this week, so that today's the Dixie Treasure Chest holds fifty dollars. If the award isn't claimed on this broadcast, another \$25.00 will be added next week. How do you get it? I'll tell you in just a moment. Just be sure to stay with us, and listen closely! This program is presented each Wednesday by the makers of Dixie Margarine—the all-purpose, all American spread. And ladies, this program isn't the only treasure chest that Dixie gives you. There's Dixie Margarine itself—a treasure in your kitchen, or for table use \* \* \* as fine an All-American spread as you'll find anywhere. And then there are the valuable coupons found in every pound package of Dixie Margarine, coupons that are extra valuable, good for such treasured merchandise as:—a two-quart aluminum stewer, a useful utility Pyrex dish, a Pyrex pie-dish, and many others that you can get for just a few Dixie  
67 Margarine coupons. Try DIXIE next time! You'll find it pays!

THEME. Back Up. 30 sec.—Out.

ANNOUNCER. Now, let's get down to the business of the Treasure Chest! Here is the Dixie Treasure Chest before me \* \* \* and in it is Fifty dollars, in crisp new bills. Fifty dollars that the makers and the dealers who sell Dixie Margarine are going to give you on this program!

Here is the simple procedure we use in giving this cash award from the open treasure chest \* \* \* We have a Dallas telephone directory here, and from it we will select a residence number—at random. If it is YOUR name, and if you answer the telephone and tell us you're listening to this program, you're eligible to win this handsome cash award of fifty dollars. All you will have to do is answer one simple question which I will ask \* \* \* and if you answer it correctly, the money will be rushed to your home by special messenger as soon as the program is ended!



All set? Then Here GOES!

(Announcer: Ad lib, selects number from directory, calls, and if call is answered follows approximately one of these routines:)

ANNOUNCER. Good morning, madam. Are you listening to the Dixie Margarine show on KRLD? (IF "NO")—I'm awfully sorry, ma'am, because if you had been, you would have been eligible for a fifty dollar cash award! I tell you what I'm going to do. \* \* \* I'd like to send you a pound of Dixie Margarine, with our compliments \* \* \* try it, and see if it's not the best you've ever used! And be sure to listen to KRLD next week at this same time. Better luck next time!

68 ANNOUNCER (if "Yes"). That's fine! You've practically got fifty dollars in your purse right now—I hope! All you'll have to do is to answer *one* question for me—and quicker than you can say "Jack Robinson", the fifty dollars will be in your hands. By the way, are you a Dixie Margarine user? (You don't have to be, but it'll help if you are.) Anyway, I'm sure you've seen Dixie Margarine on display at your grocers. Tell me—what is the color of the border on the Dixie Margarine Package? (If the answer is "Green" congratulate the lady. Get her to confirm her name and address, go into plug below.) (If the wrong answer is given, follow same procedure until the money is given, or the time is up.)

ANNOUNCER (2nd Plug). Careful housewives, in buying foods for their families, try to keep on hand plenty of basic foods—good milk, fresh eggs, fruits—and a good spread for general purposes and for use in the kitchen. WISE Dallas housewives are choosing DIXIE MARGARINE for this spread. They find it pays in more ways than one. In the first place, you can't buy a finer, better all-purpose, All-American spread. Then, in every package is a coupon good for the finest merchandise premiums. Just a few of these coupons are good for such fine household items as a utility Pyrex dish, a 2-quart genuine aluminum saucepan, and many others. Take a tip from these wise buyers. Get a pound of DIXIE MARGARINE from your grocer today. And take a tip from me—When you get that package, examine it closely.

69 You don't have to buy to win on the Treasure Chest program, but it's a pretty good idea to get acquainted with Dixie Margarine. Look it over next time you visit your grocers! And be sure to tune in again next Wednesday at 9:45 a. m. and we'll open the DIXIE TREASURE CHEST again to give away \$-----.

THEME. W 106-1—Fade for:

ANNOUNCER. Well our Dixie Treasure Chest (did/did not) pay out \$50 today, so next week's award will be \$-----. Be sure to plan on staying close by your radio next Wednesday morning.



Maybe YOU will be just that much richer for listening. In the meantime, don't forget to ask your grocer for DIXIE Margarine. We know you'll like it! Until then, this is Fritz Kuler, your Dixie Announcer, saying goodbye, and—good luck!

70

*Exhibit F-2 to affidavit*

OJR: CEB: jb

82-73-5

DEPARTMENT OF JUSTICE,  
*Washington, D. C., April 29, 1940.*

Honorable J. L. FLY,  
*Chairman, Federal Communications Commission,  
Washington, D. C.*

SIR: Reference is made to your letter dated March 29, 1940, together with inclosures, indicating that a program broadcast by Station KRLD, Dallas, Texas, entitled "Dixie Treasure Chest" is in violation of the provisions of Section 216 of the Communications Act of 1934.

Please be advised that careful consideration has been given to this matter and it has been concluded that no action is warranted by this Department.

Respectfully,  
For the Attorney General:

(S) O. John Rogge,  
O. JOHN ROGGE,  
*Assistant Attorney General.*

72

*Exhibit G 1 to affidavit*

MARCH 29, 1940.

The Honorable The ATTORNEY GENERAL,

MY DEAR MR. ATTORNEY GENERAL: The Commission is in receipt of information indicating that a program broadcast by Station WISE, Asheville, North Carolina, entitled "Sears' Grab Bag", is in violation of the provisions of Section 316 of the Communications Act of 1934. Attached hereto is a summary of facts concerning this program, together with the continuity thereof.

This matter is transmitted to you for your consideration and such action as you may deem appropriate. Please be assured that this Commission will render any assistance in this matter which you may desire.

Sincerely yours,

JAMES LAWRENCE FLY,  
*Chairman.*

Attachments.

73 SUMMARY OF FACTS CONCERNING A PROGRAM KNOWN AS "SEARS' GRAB BAG" BROADCAST BY STATION WISE, ASHEVILLE, NORTH CAROLINA

Harold R. Thoms is the licensee of radiobroadcast Station WISE situated at Asheville, North Carolina. The above program was broadcast by Station WISE beginning November 9 through November 18, 1939.

The Commission received a complaint concerning the broadcast of the program shown above, alleging that such broadcast was in violation of Section 316 of the Communications Act of 1934.

The Commission is in receipt of a letter dated February 3, 1940, from the licensee of Station WISE describing said program, which shows in substance as follows:

On the date of the broadcast a box was placed near the front door of the Sears' store. This box contained a number of slips of paper, with a number on each slip. Any one desiring to participate in the drawing could take one of these slips of paper from the box. It was not necessary to purchase any merchandise. On the day prior to the broadcast, certain numbers had been selected at random by the advertising manager of Sears' store. These numbers so selected constituted the numbers that would be called during the broadcast for the distribution of prizes. During the broadcast the announcer would pick one of these pre-selected numbers and ask the audience if any one had that number. If no one held that particular number the person holding the number nearest to that number determined the winner of the prize—an article of merchandise. These prizes ranged in value from 26 cents to \$1.00. There were from four to six prizes distributed each broadcast.

The Commission is in receipt of an additional letter, dated February 3, 1940, from the licensee of Station WISE, in which it is stated: "The management of this station desires to advise the Commission at this time, that this program will not again be broadcast over the station, either for the same or any other advertiser."

74

[COPY]

CONTINUITY

WISE

Advertiser Sears' Grab Bag  
Time 11:30 A. M.

Dates Nov. 14 & 15, 1939.  
Announcer B. Cacy.

(Opening Announcement):

Good morning, ladies and gentlemen—we are speaking to you

from the rug and furniture department of Sears' big store on Haywood Street here in Asheville. This is the fifth (sixth) day of Sears' great Super-Value Sale—the sale that is scheduled to run for five (four) more days, including today. Right now, we are about to start the fifth (sixth) of Sears' free drawings—one of the big features of this sale—it's big for you because you don't have to spend one penny to win one of these Grab Bag Prizes, and there are some mighty swell ones here at my left which the folks here can all see. For those of you who haven't heard the details of this free drawing, let me explain in just a few words. Each morning during this sale we will have this Grab Bag drawing at 11:30, and when you enter Sears' Store, you will find a box at the entrance containing slips of paper upon which are numbers. Reach in and get one, and only one. It doesn't cost you a penny to do it. Then keep that slip and number until we come on the air with the Grab Bag Program here in the rug and furniture department. Certain numbers will be called and those having the number closest or the exact number will get to draw for a prize—and a really worth while one too.—Editor.

75 (Close):

Thank you a lot folks for being here, and if you can get out of the store without taking advantage of some of these super values, I'll certainly be surprised. And don't forget that we will be back here tomorrow morning at 11:30 and each morning thereafter for the balance of the week to broadcast the Grab Bag drawing every day, and those of you who visit us during the broadcast won't have to pay out a cent to win something—something really worth while. So, be sure that you get your number when you enter Sears' Store on Haywood Street tomorrow morning—and we'll be seein' you on the air at 11:30 from WISE, Asheville.

76

*Exhibit G-2 to affidavit*

OJR:CEB:jb  
82-55-3

DEPARTMENT OF JUSTICE,  
Washington, D. C., April 29, 1940.

Honorable J. L. FLY,  
*Chairman, Federal Communications Commission,  
Washington, D. C.*

SIR: Reference is made to your letter dated March 29, 1940, together with inclosures, indicating that a program broadcast by Station WISE, Asheville, North Carolina, entitled "Sears' Grab Bag" is in violation of the provisions of Section 316 of the Communications Act of 1934.

Please be advised that careful consideration has been given to this matter and it has been concluded that no action is warranted by this Department.

Respectfully,

For the Attorney General:

(S) O. John Rogge,

O. JOHN ROGGE,

*Assistant Attorney General.*

78

*Exhibit H-1 to affidavit*

MARCH 29, 1940.

The Honorable the ATTORNEY GENERAL,  
*Washington, D. C.*

MY DEAR MR. ATTORNEY GENERAL: The Commission is in receipt of information indicating that a program broadcast by Station WFIL, Philadelphia, Pennsylvania, entitled "Especially For You," is in violation of the provisions of Section 316 of the Communications Act of 1934. Attached hereto is a summary of facts concerning this program, together with the continuity thereof.

This matter is transmitted to you for your consideration and such action as you may deem appropriate. Please be assured that this Commission will render any assistance in this matter which you may desire.

Sincerely yours,

JAMES LAWRENCE FLY,

*Chairman.*

Attachments.

PWS/ao'd.

79 SUMMARY OF FACTS CONCERNING A PROGRAM KNOWN AS  
"ESPECIALLY FOR YOU," BROADCAST BY STATION WFIL, PHILADELPHIA, PENNSYLVANIA

WFIL Broadcasting Company is the licensee of radiobroadcast Station WFIL, situated at Philadelphia, Pennsylvania. The above program was broadcast by Station WFIL six days each week, Monday through Saturday, during the period October 3, 1939 to approximately February 1, 1940.

The continuity of this program supplied by the licensee of Station WFIL shows in substance as follows:

That the station has secured and has in the studio the Philadelphia city and suburban directories; that some kind of a wheel is used to determine the person who is to be given a chance to win a Farnsworth Radio. This wheel is whirled first to find the number of the page in the directory; it is whirled a second time to determine the column on the page selected by the first whirl of the

wheel; and is whirled a third time to determine the number from the top of the column which will give the name and address and telephone number, if any, of the party so selected. If the party selected has a telephone he is called, and if he answers the telephone two questions are propounded: First, "Is your radio turned on?"; second, "To what station are you listening?" If the party is listening to WFIL, a Farnsworth radio is given to the party. There is no requirement that any purchase be made or that any coupons or facsimiles be supplied. If for any reason the party called by telephone does not respond he will be given two tickets to the "Mystery History," a network show which is given by Station WFIL every Sunday at 2:00 p. m.

If the party answering the telephone is not then listening to Station WFIL the chance of winning a Farnsworth radio is lost but the party will receive the two tickets to "Mystery History." The station also broadcasts information concerning those who have won a Farnsworth radio in accordance with the description of the program heretofore shown.

80

## WFIL RADIO AWARDS PROGRAM

JANUARY 26, 1940.

ANNOUNCER. WFIL RADIO AWARDS is on the Air!

THEME. "Especially for You."

ANNOUNCER. \* \* \* And I might add especially for you. That is the name of our theme, you know, "Especially For You." It really typifies the program for the program is "Especially for You." \* \* \* So too might I include two very beautiful Farnsworth Radio Table Models, the last word in efficiency and beauty. The name Farnsworth insures that. After all Farnsworth is the most distinguished name in the realm of Television, now introducing the radio receiver of tomorrow. Each day at 12:00 o'clock and again at 3:30 o'clock, WFIL goes before its microphones to present to you, our listeners, these splendid radios \* \* \* two of them will be given away in the next thirteen minutes. I too hope sincerely one of them goes to you. To those of you who are familiar with the setup, the explanation is perhaps not needed. The chances are that there might be someone among you who happens to be unfamiliar with the details of how we select the one to whom the radios must go. Lend an ear \* \* \* Listen. Hear that sound in the background? It is caused by the whirling of a wheel. A wheel upon which three rows of numbers have been placed, numbers which correspond first to the page of the telephone book upon which your name I hope appears. Remember, we are using two books. The Philadelphia Directory and the Philadelphia Suburban Directory. That necessitated re-number-

ing the Suburban Directory so that the pages will run consecutively, bringing us a total of 1,032 pages. Having whirled the wheel first to find the number of the page, we whirl it again to find the column on the page. Naturally it must be one, two, three or four. So now we have the page and the column. Another spin of the wheel determines the number which we count from the top of that column. Counting down, we find ourselves with a name and address and a telephone number. We call the number gotten in the manner I have described over our dial phone similar to the one you have in your home or your office. I have one by my microphone here. We ask two questions. First, is your radio turned on? and secondly, to what station are you listening? If you are listening to WFIL, and in these days it seems that most everybody is, that is all there is to it. Nothing to buy, no coupons to clip or no facsimile to draw. We present you with one of these Farnsworth Radios.

If for any reason you should be listening elsewhere or say perhaps your phone is busy at the moment I call, mechanical defects intervene so I can't complete the call, you still receive an alternate prize \* \* \* two tickets to "Mystery History" a network show over this station every Sunday at 2.00 o'clock. So you see that everyone wins and it's lots of fun.

For those of you who do not have telephones as well as those of you who do, we have the Mystery-Man, the fellow who plays the selections by transcription and defies your memory. If you remember the titles, jot them down, there are three of them, you know, and mail them to Radio Awards. Whatever radios I fail to give away by means of the telephone calls, we will give away through the medium of the Melody Man. So \* \* \* be ready will you? And now let's announce the winners for Monday at 12:00 o'clock. The selections played and unannounced were as follows: "Mandy", "Chatterbox" and "The Continental". One winner on that show Mrs. Carolyn C. M. Rice, 5928 North Seventh Street, Philadelphia, Pa.

81 Monday at 3:30, the selections played: "Under a Blanket of Blue", "My Own", and "Love and a Dime." The winner, Lee Breese, 6845 Limekiln Pike, Germantown, Philadelphia, Pa. Congratulations to you sir. Tuesday at 12:00: the selections first, "Faithful Forever", "The Shiek of Araby" and "The Little Red Fox". Congratulations to Reba Courtney, Lecony Plaza, 58th and Hoffman Streets, Philadelphia, Pa. Two winners on this show, by the way, Margaret L. Hagenor, Bellrich Apartments, 15th & Spruce Streets, Philadelphia, Penna.

82

*Exhibit H-2 to affidavit*

OJR:CEB:jb

82-62-8

Honorable J. FLY,

*Chairman, Federal Communications Commission,  
Washington, D. C.*

DEPARTMENT OF JUSTICE,

*Washington, D. C., April 29, 1940.*

SIR: Reference is made to your letter dated March 29, 1940, together with inclosures, indicating that a program broadcast by WFIL, Philadelphia, Pennsylvania, entitled "Especially for You" is in violation of the provisions of Section 316 of the Communications Act of 1934.

Please be advised that careful consideration has been given to this matter and it has been concluded that no action is warranted by this Department.

Respectfully,

For the Attorney General:

(S) O. John Rogge,

O. JOHN ROGGE,

*Assistant Attorney General.*

83

*Exhibit I-1 to affidavit*

MARCH 29, 1940.

The Honorable the ATTORNEY GENERAL.

MY DEAR MR. ATTORNEY GENERAL: The Commission is in receipt of information indicating that a program broadcast by Station WGN, Chicago, Illinois, entitled "Musico," is in violation of the provisions of Section 316 of the Communications Act of 1934. Attached hereto is a summary of facts concerning this program, together with a copy of the continuity thereof.

This matter is transmitted to you for your consideration and such action as you may deem appropriate. Please be assured that this Commission will render any assistance in this matter which you may desire.

Sincerely yours,

JAMES LAWRENCE FLY,

*Chairman.*

Attachments.

JLMcD: ps.



84

*Exhibit I-2 to affidavit*

OJR: CEB: jb  
82-23-9

DEPARTMENT OF JUSTICE,  
Washington, D. C., April 29, 1940.

Honorable J. L. FLY,  
Chairman, Federal Communications Commission,  
Washington, D. C.

SIR: Reference is made to your letter dated March 29, 1940, together with inclosures, indicating that a program broadcast by Station WGN, Chicago, Illinois, entitled "Musico" is in violation of the provisions of Section 316 of the Communications Act of 1934.

Please be advised that careful consideration has been given to this matter and it has been concluded that no action is warranted by this Department.

Respectfully,  
For the Attorney General:

(S) O. John Rogge,  
O. JOHN ROGGE,  
Assistant Attorney General.

86

*Exhibit I-3 to affidavit*

H. W. KASTOR & SONS ADVERTISING COMPANY, INC.

RADIO DEPARTMENT

File 44-3 Musico

Client: National Tea Company.

Product: National Food Stores.

Program: No. 22—Musico.

Talent: Two Announcers.

Date of Broadcast: Friday, February 16, 1940.

Time: 8:00-8:30 P. M.

Outlet: WGN—Chicago.

Comments on Broadcast: Commercial Content: National Bakery Goods Offer: Angel Food Cake and pan rolls for 20¢.

Word Count: 620.

ANSON. You have a cushion of two songs, after each prize winning song has been played. Please be guided accordingly.

87 ANSON. (With music.) Ladies and gentlemen! Welcome to the world's newest and most fascinating prize game—Musico—with your Musico master, Bill Anson—Bob Elson—and Harold Stokes and his orchestra and a new surprise



feature. Musico, a game that anyone can win by just checking the names of songs. A half hour of thrills, fun, excitement. Draw up close, folks. Get your Musico cards and pencils ready. Join us in the big prizes that are given absolutely free.

(Pause.)

MUSIC. Seque Into Theme.

Theme Up.

Bring Under for.

ELSON. Ladies and gentlemen, this is Bob Elson speaking. I want to invite you to play Musico—brought you every Friday at this time by the National Food Stores. You simply play with Musico cards, which you get absolutely free at all National Food Stores in grocery and meat departments, and which are distributed house to house as well as at Station WGN. You don't have to buy a thing. Musico cards are free.

MUSIC. Theme Up and Out.

ELSON. Now listen carefully to the rules. As the orchestra plays a song check it off your card. The person who correctly checks all the numbers across row 2—the second row on your card and phones the correct list to our number first, Harrison 6912 is the winner of \$50.00 in cash. The person who correctly checks off all the numbers across the fourth row—row 4—and phones the correct list first, wins \$75.00 in cash. The person who

88 correctly checks off all songs across the 5th row of the card—row 5—and phones the correct list first wins \$25.00 in cash.

Now here is how you win grocery bags. If you correctly check the songs played across any row except row 1 you are the winner of a big bag of groceries. Then simply take your card to your nearest National Food Store before closing time tomorrow Saturday, February 17. You do not need to telephone to win grocery bags. And here's the grand cash prize \* \* \* a big \$100 cash prize for those of you who check all songs across Row 1 or any other row on their Musico card and then write a slogan of 15 words or less on "I like Jumbo Twist Bread because —." Then write your name and address on the card and mail to: P. O. Box 6110A, Chicago, Illinois. The cards having the correct check-off of songs on row 1, or any other row and having the most unique and apt slogan will be declared winners of \$100 in cash. Remember, every Musico card is a possible winner of one of the prizes offered each week. So, even though you can't win every prize with every card, you may still win one of the prizes with any Musico card you get. You do not even have to have a Musico card to compete for a prize. If you have no card, simply list all the songs played on tonight's program in their correct order and send it in with your slogan of 15 words or less. All slogans must be mailed before midnight to-

morrow (Saturday). The decision of the judges will be final in every case. o grocery bags will be given on row 1. Do not  
 89 call up on row 1. Submit a slogan on Row 1. Musico is a game of skill \* \* \* a quiz game you can play at home.

ORCHESTRA. Theme Up and Out.

ELSON. And now, without further ado, I bring you that musical playboy, the little man who's always there, your Master of Musico, Bill Anson.

ANSON. Well—thank you Bob and good evening one and all. Welcome to another of our big Musico parties. And folks, tonight our Musico party is going to be bigger and better than ever because we have a grand new Musico feature that—well, I'll tell you about it a little later. Now—has everybody got their Musico cards and have you all put big circles around tonight's three cash rows? They're 2, 4, and 5. That's right \* \* \* 2, circle \* \* \* 4, circle, and 5, circle. Here comes our first big number so—Strike up the band for Musico.

ORCHESTRA. Lovely To Look At.

ANSON. Yes, yes. The title of that song is what I told Hedy LaMarr—just before she shut the door in my face \* \* \* You're Lovely To Look At. Yes, You're Lovely To Look At was the title of that song. So if you've got it on your Musica card, put a big X right over because that's how you win Musico. But from now on, I can't tell you the names of any more of the numbers because Musico is a game of skill so it's up to you to recognize the songs from now on. All clear? National presents Musico.

ORCHESTRA. Sing You Sinners.

90 ANSON. Did you recognize that song and did you mark it off on your card? If you haven't already done so—do it right away. And I hope that it was on the same line as the last one because that takes you one step nearer to winning one of those big prizes. So hurry up and fill a row—with National's big game—Musico.

ORCHESTRA. Sweet Sue.

ANSON. Well—if that wasn't Sweet, Sue me! Now let me remind you—as soon as you have five winners across rows 2, 4, or 5 on your Musico card, pick up that phone and call Harrison 6912 for a big cash prize. Tonight, row 2 pays \$50.00, row 4, \$75.00, and row 5, \$25.00. And there's a grand, grand prize of one hundred dollars for sending in a slogan with row 1. Set? Musico.

ORCHESTRA. Lullaby of Broadway.

ANSON. And now, ladies and gentlemen of Musico, it is my very great pleasure to bring you our big surprise feature of the evening—the Musico Masked Tenor. I say it's a pleasure for me to introduce him—I promise you, it'll be an even greater

pleasure for you to listen to him. Ladies and gentlemen, the Musico Masked Tenor.

Applause.

Our tenor will sing the next number in Italian. Ladies and gentlemen, Musico.

ORCHESTRA & TENOR. Lamp Is Low.

Applause.

91 ANSON. And that really was beautiful, wasn't it, folks?

Our Musico Masked Tenor will be back later in the show. In the meantime, don't forget—there are hundreds of prizes still waiting to be won—so on with the show. National brings you Musico.

ORCHESTRA. Jubilee.

ANSON. Ah, yes—and the title of that song is what a lot of Musico prizewinners will be having tonight. So watch those squares and song titles carefully—and grab your pencils because here comes another—Musico.

ORCHESTRA. Merry Widow Waltz.

ANSON. Well, mother and dad have danced to that tune many a time \* \* \*. And some of us will be dancing to it too tonight if it puts a big X on one of those big cash rows. There's plenty of cash and stacks of groceries to be won when National brings you Musico.

ORCHESTRA. Harbor Lights.

ANSON. Now comes time again for another of our little Musico movies. Our scene tonight is the home of the world's greatest pessimist, Jeremiah Threadneedle. As we fade in, we find the eccentric old pessimist—played my myself—being interviewed by National's star reporter, Bob Elson played by—Guess who?—All set? Lights, camera, action.

ANSON. (Character \* \* \* Fading in) So, young man, you say you are a newspaperman?

ELSON. I have, Bill—listen. Folks. \* \* \*

ANSON. It might interest you to know that I'm an old newspaperman myself.

92 ELSON. Really, Mr. Threadneedle? Why did you quit?

ANSON. (Snapping) I found there wasn't much money in old newspapers.

ELSON. Oh.

ANSON. Besides, there's no real news in the world. No, sir! That's why I'm the world's greatest pessimist, Mr. Elson.

ELSON. The world's greatest pessimist, eh?

ANSON. Right! I'm the only man in the world who can look at a doughnut and only see the hole!

ELSON. You sure are a pessimist, Mr. Threadneedle. But you're wrong about there being no real news in the world.

ANSON. Bah!

ELSON. Because I've got some news that thousands of American housewives are going to welcome right now.

ANSON. If that's so—let's hear it!

ELSON. All right. Here goes:

93 ANNOUNCER. Attention, ladies, for news of a really amazing bargain offer. In order to get you acquainted with National's delicious line of bakery goods—we're going to let you in on a bargain that's just too good to miss! Listen to this! Tomorrow only—you can get a full dozen of National's delicious Pan Rolls for only one cent—with your purchase of National's 13 Egg recipe Angel Food Cake. Remember—this is a real, 13 Egg recipe Angel Food Cake. So soft, downy, and fine-textured, it fairly melts in your mouth. Made of the finest quality ingredients—and baked to perfection in National's own modern, sanitary bakery—its rich, appetizing flavor, and smooth velvety texture will bring smiles as bright as an April sunrise from everyone in your family. Remember—you get this big 13 Egg recipe Angel Food Cake—for only 19 cents. And, in addition, you get one full dozen of National's delicious Pan Rolls—for only one cent extra! Think of it! Rolls for Sunday breakfast—and a big, delicious 13 Egg recipe Angel Food Cake for Sunday dinner! Both for just 20 cents. But here's one word of warning. This amazing bargain offer is good for only one day—tomorrow—Saturday—February 17th. And, last time this amazing one cent offer was made—so many thousands took advantage of it—that our stocks were exhausted early in the day. Don't take chances on missing out. Do your week-end shopping early—at your neighborhood National Food Store. Get National's big, 13 Egg Recipe Angel Food Cake for only 19 cents. And—for just one cent more accept one full dozen of National's delicious Pan rolls.

94 ELSON. There, Mr. Threadneedle—what do you think of that for real news?

ANSON. By cracky, that's real news all right and I guess I'm not such a pessimist no more—but—

ELSON. What?

ANSON. To hear you mention that there thirteen egg recipe makes me wonder—

ELSON. Wonder about what?

ANSON. About my breakfast tomorrow morning—y'see, for twenty years, I've been such a pessimist that I've had to wear smoked glass at breakfast—I never could stand the sight of eggs sunnyside up!

ORCHESTRA. Finish chord.

ANSON. All right, folks—we're ready for another big Musico number, so grab your pencils and get ready to mark a big X on your card—Musico.

ORCHESTRA. Cowboy From Brooklyn.

ANSON. Now, let's see. We've only had one cash winner so far tonight. That means rows 4 and 5 are still open for cash awards. Row 4 pays \$75.00 and row 5, \$25.00. So as soon as you've checked all five songs across either of these rows, get to the phone and call Harrison 6912 right away. The first person phoning in the correct list of songs on either of these rows—that's 4 or 5—receives the cash award. The rest checking these rows win groceries. Do not call up if you have Musico on any other row. National brings you Musico.

ORCHESTRA. Wishing.

95 ANSON. And that, folks, is—what's the matter Bob. Folks, Reporter Elson seems to have something important to say—

ELSON. I have, Bill—listen. Folks. \* \* \*

You may have attended a home luncheon demonstration, where they served a meal cooked in Castrite Waterless Cookware! Remember how delicious that food tasted! Well, here's grand news! You can now get Castrite Waterless Cookware at  $\frac{1}{4}$  the former home luncheon demonstration price—on National's easy Card Plan! It's a marvelous bargain! Get your Castrite Cookware Card tomorrow—at your neighborhood National Food Store!

ANSON. Okay Bob! Now let's get on with—Musico.

ORCHESTRA. D'Lovely.

ANSON. And the title of that song is what you remark when our Postal Telegraph boy hands you a check for one of those big Musico cash prizes. You say it's—the title of the song! So let the big cash prizes flow—on National's big game—Musico.

ORCHESTRA. I Can't Give You Anything But Love.

ANSON. Ah, yes—And if you know what the Scotchman said to the bill collector—you know the title of that song. Well, folks, there's still hundreds of grocery bags to be won tonight—on every row, except row 1—that's the big \$100.00 row you mail in with a slogan. All set? Musico.

ORCHESTRA. Am I in Love.

ANSON. And now, folks, we'll all have the pleasure of listening to our Musico Masked Tenor again—he's going to sing the next number for us in his native Italian. The downbeat, please, Harold—Musico.

96 ORCHESTRA (TENOR). Temptation.

ANSON. Thank you sir \* \* \* It's a pleasure for us to listen, I assure you—and what a break for our Italian listeners!

And now comes time again for a word from the only announcer who can successfully lay thirteen eggs on one program—Bob Elson.

ELSON. Don't forget that amazing bargain offer I told you about earlier tonight! Remember—tomorrow only—you will be able to get a full dozen of National's delicious Pan Rolls for only one cent—with your purchase of National's 13 Egg Recipe Angel Food cake! So tomorrow's one day you want to do your shopping bright and early, believe me! Last time we made this sensational bargain offer—so many thousands took advantage of it—our stocks were exhausted early in the day! And no wonder! Because I'm right here to tell you that this big 13 Egg recipe Angel Food Cake is just about the grandest cake you've ever had the pleasure of eating! It's rich, full flavored and so soft and delicately textured—it will capture compliments galore for you at your biggest Sunday dinner! And remember—you get this delightful treat—this big 13 Egg recipe Angel Food Cake—for only 19 cents! And in addition—you get a full dozen of National's delicious Pan Rolls—for only one cent extra! Imagine—delicious Pan Rolls that will really hit the spot at Sunday breakfast—and a big, taste-tempting Angel Food Cake for Sunday dinner—all for the amazing price of only 20 cents! This sensational one cent bargain offer is good for one day only—tomorrow—

Saturday, February 17th! Get your big 13 Egg receipt  
97 Angel Food Cake—tomorrow! Pay just 19 cents! Then for just one cent extra—accept a full dozen of National's delicious Pan Rolls! But here's a friendly warning! These delicious cakes and rolls will be snapped up in a hurry! Shop early! Don't take chances on missing out!

ANSON. Thank you, Bob, that was beautiful. The way you described that cake makes me glad I don't have to be an angel to buy one tomorrow. Now let's get back to the show—National brings you—Musico.

ORCHESTRA. I'm Gettin' Sentimental.

ANSON. Lemme see—lemme see. That makes 15 big Musico numbers for tonight so far with the \$25.00 cash prize still waiting to be won. Not to mention the hundreds of grocery bags. So let's go—Musico.

ORCHESTRA. White Sails.

ANSON. And that one should have been fairly easy and, folks, let me remind you—even if you don't win a cash prize on any of the three cash rows on tonight's program, don't think you've been left behind \* \* \* You haven't. Because if you correctly checked any of these rows you are still a winner. You can claim big shopping bags of groceries at your National Food Store tomorrow, Saturday, before closing time. And those grocery bags

are well worth winning, buh-lieve me. So let's get back in the groove with another—Musico.

ORCHESTRA. Sweet and Low.

ANSON. And what did that song do for you? Were you able to fill out a line? Don't forget that you can win \$100.00 in  
98 cash simply by filling out any line across and submitting a slogan of 15 words or less on "I Like Jumbo Twist Bread Because——" And now we bring back our Musico Masked Tenor to sing tonight's final song. Ladies and gentlemen—Musico.

ORCHESTRA AND TENOR. Goodnight Sweetheart.

ANSON. Thank you, sir—thank you very much. By the way, may I introduce myself—my name is Bill Anson. \* \* \*

TENOR. (Short sentence fastly spoken in Italian.)

ANSON. Er—well—thanks anyway. Glad to know you. But, kidding, aside, folks, how did you like our tenor tonight? You did?

BUSINESS. Applause.

ANSON. Did any of you recognize the voice? Do any of you folks here in the studio audience have any idea as to who he is—even though he is masked? If you think you do know him—drop us a line on a postcard to Station WGN \* \* \* Better still—write us anyway and let us know how you like his voice and if you'd like to hear him every week. Will you do that? \* \* \* Thanks, that's swell. Now, you folks know that those who checked all songs across rows 2, 3, 4, and 5 tonight win one of those big shopping bags of groceries. Just take your Musico card to your National Food Store tomorrow, Saturday, before closing time. Those of you who succeeded in checking all songs across row one, mail in your card with your slogan of 15 words or less on: "I Like Jumbo Twist Bread Because——" and compete for that big \$100.00 prize. Now, don't forget to be back with us again next week. You will have another chance to win. And remember, too, you don't have to spend a penny to play Musico. You can get a card  
99 free just for the asking. And now, our cash winners for tonight were \* \* \*

\$75.00 in cash for Line 4-----

\$50.00 in cash for Line 2-----

\$25.00 in cash for Line 5-----

The winner of last week's \$100.00 grand prize was-----  
This is your Musico Master, Bill Anson, wishing you good luck until next Friday when we'll be back with more fun, thrills and surprises.

BUSINESS. Theme up and under.

ELSON. This is Bob Elson again, folks. I want to remind you that if you have checked all songs across rows 2, 3, 4, and 5 you have won valuable merchandise prizes. Take your Musico card



to your National Food Stores tomorrow, Saturday, before closing time. Get your Musico cards for next week right away. Musico cards are distributed in the vicinities of National Food Stores located in Illinois, Iowa, Michigan and Indiana. Next week's card will be pink and only pink cards will win. Get your pink Musico cards right away, tomorrow. They're free and you don't have to buy a thing. [Pause.] The fascinating new game of Musico is brought to you every Friday at this time by National Tea Company Food Stores. Music is under the direction of Harold Stokes. Play Musico and win. This is Bob Elson saying so long until next Friday night at 8.

100

## 1ST WINNER CARD

Winner! There's a cash winner in—and on line 2—the \$50 row! And the rest of you are prize bag winners. We do not know the name and address yet, but we will in a minute. Just as well hang up your phones folks, if you have checked all songs across line 2. The cash winner is in. The rest of you who checked this row win big shopping bags of groceries.

101

## 2ND WINNER CARD

Winner! There's a cash winner in—and it's on line 4—the \$75 row. We do not know the name and address yet, but we will in a minute. There's no need of phoning folks, if you've checked all songs across line 4. The cash winner is in! The rest of you who checked this row win big shopping bags of groceries!

102

## 3RD WINNER CARD

Winner! The last cash winner is in! The rest of you checking row 5 are prize bag winners. We do not know the name and address yet, but we will in a minute. You had just as well hang up your phones, folks, if you've checked all songs across line 5. The cash winner is in! The rest of you who checked this row win big shopping bags of groceries.

103

## 1ST CASH WINNER

Name-----

Address-----wins \$50 on Row 2, everyone else checking out this row wins grocery prizes. [Applause.] Congratulations. A Postal Telegraph boy will deliver a money order. And folks, if you have checked all songs across line 2 on your Musico card you can hang up. The cash winner is in. Remember, if you correctly checked this row, row 2, and did not win the \$50



cash prize—you still win grocery prizes. Take your Musico card to National Food Store tomorrow.

104

## 2ND CASH WINNER

Name\_\_\_\_\_

Address\_\_\_\_\_ wins \$75 on row 4. Everyone else checking out this row wins grocery bags. [Applause.] Congratulations! A Postal Telegraph boy is on the way with a money order for \$75. Folks, if you have checked all songs across row 4 on your Musico card, you may as well hang up your telephone receiver. You win grocery prizes even if you did not win the \$75 cash prize. Take your card to your National Food Stores tomorrow.

105

## 3RD CASH PRIZE

Name\_\_\_\_\_

Address\_\_\_\_\_ wins \$25 on Row 5, everyone else checking out this row wins grocery bags. [Applause.] A Postal Telegraph boy is on the way with the \$25 money order. And now that all 3 cash winners are in, our telephone girls are going home. No more calls will be received, so hang up your phone, folks, our board is closed. Yes, sir, I mean it \* \* \* our board is closed. No more calls tonight.

106

*Exhibit J-1 to affidavit*

MARCH 29, 1940.

The Honorable the ATTORNEY GENERAL,  
Washington, D. C.

MY DEAR MR. ATTORNEY GENERAL: The Commission is in receipt of information indicating that a program broadcast by Station WIP, Philadelphia, Pennsylvania, entitled "Songo," is in violation of the provisions of Section 316 of the Communications Act of 1934. Attached hereto is a summary of facts concerning this program, together with the continuity thereof.

This matter is transmitted to you for your consideration and such action as you may deem appropriate. Please be assured that this Commission will render any assistance in this matter which you may desire.

Sincerely yours,

JAMES LAWRENCE FLY,  
Chairman.

Attachments.  
PWS: ahh.

107

*Exhibit J-2 to affidavit*

OJR: CEB: jb  
82-62-9

DEPARTMENT OF JUSTICE,  
*Washington, D. C., April 29, 1940.*

Honorable J. L. FLY,  
*Chairman, Federal Communications Commission,  
Washington, D. C.*

SIR: Reference is made to your letter dated March 29, 1940, together with inclosures, indicating that a program broadcast by Station WIP, Philadelphia, Pennsylvania, entitled "Songo" is in violation of the provisions of Section 316 of the Communications Act of 1934.

Please be advised that careful consideration has been given to this matter and it has been concluded that no action is warranted by this Department.

Respectfully,  
For the Attorney General:

(S) O John Rogge,  
O. JOHN ROGGE,  
*Assistant Attorney General.*

108

*Exhibit K to affidavit*

STOP THE MUSIC—RADIO

WJZ & NETWORK

Program No. 222

8: -9: 00 P. M. EST

June 22, 1952

Sunday

(Music. \* \* \* Quick Attention Getter \* \* \* Cut for \* \* \*.)

Don. (With Excitement.) Attention, long distance operators from coast to coast! Stand by! In just a moment, calls will go out from our studio switchboard to all parts of the country! Please hurry the calls through—one of those calls may bring someone in your town a fortune in prizes now worth \$15,100! Okay, here we go \* \* \* with the most exciting game in radio \* \* \* Stop the Music!

(Music. \* \* \* Sting and Build Under. \* \* \*)

Don. \* \* \* with Harry Salter's Orchestra, the songs of Dick Brown and June Valli \* \* \* our Master of Musical Ceremonies, Bert Parks \* \* \* and starring YOU \* \* \* the people of America. [Applause \* \* \* simultaneously with \* \* \*.]

(Music. \* \* \* "Strike Up the Band" \* \* \*) [Applause.]

PARKS. Stop the Music! Hello, America, this is Bert Parks inviting you to play Stop the Music, ABC's national Sunday night game for the whole family \* \* \* songs, music, and prizes \* \* \* so get ready set \* \* \* here we go \* \* \* till we Stop the Music.

(Music. \* \* \*) [Applause.]

109 PARKS. Well Dick Brown gets us off to a start with "The Merry Go Round Broke Down" \* \* \* Now here's a lovely bit of stuff from our lively old maestro \* \* \* swing it Harry Salter.

(Music. \* \* \*) [Applause.]

PARKS. "That's A Plenty" and now coming up it's a musical state that's really great so let's ride with Harry and the orchestra.

(Music. \* \* \*) [Bell.]

PARKS. Stop the Music! \* \* \* Hello, operator, where is our first call to tonight please? Pittsfield, Massachusetts \* \* \* all right, to speak to whom? Mr. Gilbert Lorne \* \* \* Hello, Gilbert \* \* \* how are you tonight, sir. Well, it's a pleasure to talk to you Gilbert \* \* \* do you know who's calling? That's right \* \* \* It's old Bert \* \* \* How's everybody in your family, Gilbert? Good. And we're calling as you know on Stop the Music \* \* \* we have a beautiful Snowwhite Perfection Electric Range that cooks by the clock while you rest or shop. What's the name of that song we were playing and the audience was helping us out with? "Deep in the Heart of Texas" \* \* \* that's right. [Applause.] Here's our Mystery Melody \* \* \* and you have the first opportunity tonight to identify that mystery melody for more than \$15,100 in prizes \* \* \* here it is.

(Music \* \* \* Mystery melody.)

110 PARKS. All right, Mr. Gilbert Lorne of Pittsfield, Mass., remember the first answer counts \* \* \* what do you say is the exact title? \* \* \* Now repeat that one more time \* \* \* You don't know it \* \* \* [Laughter.] Oh, I'm awfully sorry, Gilbert \* \* \* anyway we're still going to send you that Perfection Electric Range and a treasure chest of Old Gold cigarettes \* \* \* Thank you for joining us \* \* \* Bye. [Applause.]

PARKS. Now, here's Juné Valli to sing.

(MUSIC. \* \* \*) [Applause.]

PARKS. Oh, that's one of the greatest by the great team of Rodgers and Hammerstein \* \* \* "June Is Bustin' Out All Over" \* \* \* and now you know there are many ways to make love \* \* \* say it with flowers, say it with poetry or say it with music like this \* \* \* Dick Brown.

(Music. \* \* \*) [Applause.]

PARKS. Very nice Dick \* \* \* and it's called "Here In My Heart" \* \* \* and now a touch of that old Latin rhythm \* \* \* give us a beat and turn on the heat, Harry Salter.

(Music. \* \* \*) [Bell.]

PARKS. Stop the Music! \* \* \* Yes, operator, where to now, please? Right here in Forest Hills, N. Y. \* \* \* All right \* \* \* to speak to whom? Mr. Alfred Jacoby \* \* \* Hello, Alfred \* \* \* well I'm fine \* \* \* where do you live in Forest Hills? 112th Street \* \* \* What do you do, Mr. Jacoby?

Manufacturer of cotton dresses called "Faithful Frocks" \* \* \* [Laughter.] Beg pardon \* \* \* and sold in my hometown, too \* \* \* well that's fine. Mr. Jacoby, as you know we're calling for Stop the Music \* \* \* we have a beautiful 5 piece set of world famous Amelia Earhart luggage to carry with pride wherever you travel \* \* \* do you know the name of that song? "The Carioca" \* \* \* right. [Applause.] Yes \* \* \* as you know, Mr. Jacoby, we have a jackpot that's been building up over a number of weeks, and now it's more than \$15,100 in prizes \* \* \* do you think that you know the title of our Mystery Melody? \* \* \* well, now wait \* \* \* Alfred \* \* \* hold on because we're going to play it for you \* \* \* remember your first answer counts \* \* \* think about now, because here it is \* \* \*

(Music. \* \* \* Mystery melody.)

PARKS. All right Mr. Alfred Jacoby in Forest Hills, Long Island \* \* \* what is your answer? You say that the title is the "Sabre March" \* \* \* no, I'm awfully sorry, Al, that isn't it \* \* \* but we're still going to send along to you that Amelia Earhart luggage and a treasure chest of Old Gold cigarettes and thank you, sir, for joining us in Forest Hills. [Applause.]

PARKS. Friends, each week our telephone numbers are picked impartially \* \* \* tonight's numbers were picked at random from our complete collection of U. S. Phone Books \* \* \* naturally if you are in anyway associated with Stop the Music you are ineligible to win prizes \* \* \* And friends, don't forget that nobody is called ahead of time \* \* \* to participate on Stop the Music. None of our phone calls on these Sunday nights are made in advance \* \* \* So stand by, because yours may be the next phone to ring \* \* \* as we play Stop the Music and here is June Valli to sing for you.

(Music. \* \* \*) [Bell.]

PARKS. Stop the Music! Yes, operator, where to now please? [Applause.] All right this time we go out to Tucson, Arizona \* \* \* and who is waiting to talk to us? Mrs. Beulah Wesley \* \* \* Hello, Mrs. Wesley \* \* \* well I'm fine and what were you doing when we called besides listening to Stop the Music, Mrs. Wesley? You were going to take a ride in your new car? \* \* \* oh, wonderful. When did you get it? Got it yesterday \* \* \* well how's the weather out there in Tucson? How warm would you say? 109 \* \* \* [Aud. Reaction.] Well you know it's

been awfully hot here today \* \* \* too \* \* \* [Laughter.] Just got out of a swimming pool \* \* \* Mrs. Wesley, as you know this is Bert Parks on Stop the Music \* \* \* we have \* \* \* before you go out in the car \* \* \* just want to \* \* \* we have a Westinghouse Laundromat here that washes, rinses, damp dries and shuts itself off \* \* \* do you know the name of that song?

113 Ma'am \* \* \* "Be My Love" \* \* \* that's right. [Applause.] All right \* \* \* now if you know the title of our Mystery Melody \* \* \* this will be the most enjoyable automobile ride you ever took in your life because here it is \* \* \*

(Music. \* \* \* Mystery melody.)

PARKS. All right there you are, Mrs. Wesley, out there in Tucson, Arizona \* \* \* we hope you have it \* \* \* what is the title? "The Victory March" \* \* \* no \* \* \* Beulah, I'm awfully sorry \* \* \* beg pardon \* \* \* oh, I am too \* \* \* Sure we're going to send you the Westinghouse Laundromat for identifying the first song correctly \* \* \* and a treasure chest of Old Gold cigarettes \* \* \* thank you for joining us \* \* \* hope you enjoy your new car. [Applause.]

PARKS. Now, for the first part of our exciting jackpot \* \* \* listen to this.

(Music. \* \* \*)

ANNCR. Yes, by the sea \* \* \* a vacation for two especially provided by the Traymore Hotel of Miami Beach, Florida \* \* \* You'll fly Safeway Travel Aircoach on one of their irregular flights to Miami Beach for two fabulous weeks of fun and entertainment all planned by the Traymore Hotel \* \* \*

(Music. \* \* \*)

ANNCR. Sweetheart of a prize from pure mild Sweetheart Soap \* \* \* \$1000 deposited in your name in your favorite bank plus a full case of the big bath size cakes of Sweetheart \* \* \* the bath and complexion soap used by 9 out of 10 cover girls for daily beauty care.

114 (Music. \* \* \*)

ANNCR. You'll travel in style with a complete \$1,000 wardrobe of the world famous quality made Amelia Earhart luggage. Smartly styled Amelia Earhart exclusive creations you'll be proud to carry.

(Music. \* \* \*)

ANNCR. From Bonny Belle a year's supply of their famous Ten-O-Six lotion that's perfect for sunburn and wonderful for your skin and you'll be a real Bonny Belle with \$500 spending money while in Florida.

(Music. \* \* \*)

ANNCR. Candy for the kids \* \* \* A sweet supply from Peter-Paul, makers of kitchen-fresh chocolate covered cocoanut Mounds

and Almond Joy candy bars \* \* \* And Peter-Paul will also send you \$1,000 for a maid to look after the children.

(Music. \* \* \*)

ANNCR. Also for the kids, a year's supply of delicious Zero frozen custard style dessert, the perfect texture dessert that's quick and easy to prepare and the makers of Zero are also sending you a \$500 credit for your local food store to complete your menus throughout the year.

(Music. \* \* \*)

ANNCR. A prize for the whole family to enjoy \* \* \* first for mother and dad \* \* \* a matched pair of America's finest genuine Schwim Hornet bicycles fully equipped and two additional guaranteed Schwim bicycles for the kids \* \* \*

(Music. \* \* \*)

ANNCR. Dad could go fishing in style with world famous  
115 Wright and McGill fishing equipment—rod, reels, eagle-claw, fishhooks, everything he needs and he'll also receive from Wright and McGill a new motor boat to continue your fishing for many years.

(Music. \* \* \*)

ANNCR. Don't get frightened, you're not going to get a tiger, but you are going to receive one of the prettiest jungle pets this side of the tropics \* \* \* a beauty, a fabulous scarlet Macaw, the most colorful of all tropical birds \* \* \* tame, affectionate, she can talk, sing and whistle and she's all yours with the compliments of Tropical Hobby Land in Florida \* \* \* world famous tropical zoo.

(Music. \* \* \*)

ANNCR. That's only the first part of our jackpot, Bert Parks.

PARKS. OK, on with the show now till we Stop the Music. \* \* \* Take it away Harry Salter.

(Music. \* \* \* ) [Applause.]

PARKS. Well, how about that. 'Course you're right if you said "Pennsylvania Polka" and now a declaration of undying affection and here to state the case for love, Dick Brown.

(Music. \* \* \*). [Bell.]

PARKS. Stop the music. [Applause.]

PARKS. Now, where to operator \* \* \* Thibodaux, Louisiana \* \* \* all right and speak to whom? John Donnet \* \* \* Hello

John. Well, I'm fine, sir. Tell me exactly where is Thibodaux, La.? 52 miles west of New Orleans. \* \* \* Well, how  
116 many people in your town? How many \* \* \* what's the population? Between 7 and 8 thousand \* \* \* I see. Do you have a family, John. And what is your occupation? In the frozen food business. Oh, well, good for you. John, this is Bert Parks in New York on Stop the Music. We have a 124 piece set

of Brock California Farmhouse dinnerware, traditionally American in a gay sparkling pattern \* \* \* do you know the name of the song Dick just sang? "Because of You" \* \* \* well \* \* \* [Applause.] All right, John, that means that you have an opportunity to identify that Mystery Melody \* \* \* we sure hope you know it. Listen closely here it is.

(Music. \* \* \* Mystery melody.)

PARKS. All right, John Donnet, down in Thibodaux, La., what is your answer? Pardon? It's from a Sousa March \* \* \* No, I don't believe so, John \* \* \* You don't know the title anyway though do you? I'm sorry but anyway we're still going to send to you the Brock Dinnerware and a treasure chest of Old Gold Cigarettes \* \* \* and thank you, John, for joining us down there in Thibodaux, La. [Applause.]

(Music. \* \* \*) [Applause.]

PARKS. Well either one, "The Eyes of Texas" or "I've Been Working On The Railroad" they're both OK \* \* \* Now, ladies and gentlemen, in keeping with our feeling that occasionally you like to hear the better things \* \* \*

117 [Laughter.] Wow wee \* \* \*

(Music. \* \* \*) [Applause.]

PARKS. That's from Gilbert & Sullivan \* \* \* I'm awfully sorry \* \* \* it's called "Titwillow" \* \* \* Now we're off to a windy city and let's swing along with a song and Harry Salter.

(Music. \* \* \*) [Bell.]

PARKS. Stop the Music! Yes, operator, where to now please? New Market, Va. All right to speak to? Mr. Robert Blackburn, how are you tonight? Well fine \* \* \* it's a pleasure to talk to you, Bob \* \* \* your family all right? Well, that's good. This is Bert Parks in New York and we have a beautiful ensemble of 6 Evans Silver automatic table lighters plus glamorous personal jewel accessories \* \* \* do you know the name of that song that Harry was just playing \* \* \* The one the orchestra played \* \* \* yes sir. Beg pardon \* \* \* "Chicago" \* \* \* right. [Applause.] Now listen to our Mystery Melody for \$15,100 in prizes.

(Music. \* \* \* Mystery melody.)

PARKS. All right, Mr. Robert Blackburn of New Market, Va. \* \* \* what is your answer? The title of our Mystery Melody \* \* \* do you know, sir? You don't know, Robert? You said tell me somebody \* \* \* I don't know who he's talking  
118 to \* \* \* [Laughter.] Anybody tell you? Huh \* \* \* Robert \* \* \* where you been? [Laughter.] Washington & Lee Swing \* \* \* no I'm awfully sorry \* \* \* Bob \* \* \* anyway we're still going to send you that Evans Showcase and a treasure chest of Old Gold cigarettes and thank you for joining



us down there in New Market, Va. \* \* \* Here's June Valli.] [Applause.]

(Music. \* \* \*) [Bell.]

PARKS. Stop the Music! [Applause.] Yes, operator, where to please? Seattle, Washington \* \* \* to speak to whom? Mrs. Flora Eddling. Hello, Mrs. Eddling, how are you tonight, Mrs. Eddling? Well good \* \* \* this is Bert Parks \* \* \* we're going to send you if you can identify that latest record release of June Valli's a beautiful de luxe Westinghouse Refrigerator with its own giant super freezer \* \* \* do you know the title? Beg Pardon? Any idea, Mrs. Eddling? "I'm In Love With A Wonderful Guy" \* \* \* No, I'm sorry Mrs. Eddling \* \* \* Anyway we'll send you a 26 piece set of Kaylan's famous steel cutlery and a treasure chest of Old Gold cigarettes \* \* \* Thank you for joining us in Seattle, Washington. Goodbye. [Applause.] Well, that means we go to our first studio contestant tonight. Young man, your name, sir.

CONTESTANT. Bob Larson.

PARKS. Bob Larson and where's your home, Bob?

119 CONTESTANT. Milwaukee, Wisconsin, Bert. I'm a disc jockey out there and if any of my fans are listening, this is Coffee Head. [Laughter.]

PARKS. Coffee Head \* \* \* they call you Coffee Head?

CONTESTANT. Coffee Head \* \* \* yes, Coffee Head.

PARKS. Well, you sound like you escaped from Dick Tracy there \* \* \* [Laughter.]

PARKS. Bob, what are you doing at Stop the Music this evening?

CONTESTANT. Well, we're vacationing out here in the East, Bert, and I'll tell you I've been hit by so many listeners in the past few weeks with requests for Dick Brown's latest recording of "Whistle My Love" and the new recording that's just about broken madly in Milwaukee called "Strange Sensation" by June Valli, I had to come up and see what these people look like in person.

PARKS. Well, wonderful and what did you did today, Coffee Head? [Laughter.]

CONTESTANT. Bert, first thing I did this morning \* \* \* I think we got up about seven \* \* \*

PARKS. Oh, you overslept a little bit \* \* \* [Laughter.]

CONTESTANT. Yeah \* \* \*

PARKS. But you're having fun and it's a great pleasure to welcome you here. Bob, do you know the name of that song? I bet you do.

CONTESTANT. So Madly In Love \* \* \*

120 PARKS. So Madly In Love \* \* \* you're right. [Applause.] Ok, on with Stop the Music.

(Music. \* \* \*) [Applause.]

PARKS. Well, that's a bit from Il Trovatore and it's known as the Anvil Chorus \* \* \* No matter what's the size of the coin, this next one is like money in the bank \* \* \* and show them what we mean, Dick boy.

(Music. \* \* \*) [Applause.]

PARKS. That of course was "Pennies From Heaven" \* \* \* now stay with us while Stop the Music pauses briefly for station identification \* \* \*

(Music. \* \* \*)

ANNCR. The next quarter hour of Stop the Music is brought to you by the makers of Kix \* \* \* tasty crispy corn puffs \* \* \* food for action and the makers of Dentyne the gum with breath taking flavor \* \* \* and Beeman's Pepsin \* \* \* the gum that's great to chew and good for your digestion too.

(Music. \* \* \*) [Bell.]

PARKS. Stop the Music \* \* \* [Applause.] Yes, sir, where to now operator \* \* \* we're calling Milwaukee, Wisconsin \* \* \* all right and speak to whom? \* \* \* Mr. Earl Forbore \* \* \* Hello, Mr. Forbore \* \* \* how are you sir? By the way, do you know Coffee Head's here \* \* \* [Laughter.] You know 121 Coffee Head, Earl? Said you heard him on the radio \* \* \* well that's always good \* \* \* Bob Larson's here \* \* \* Now, we'd like to ask you for a beautiful Sterling Silver Service for 6 from Westmorland Silverware in their famous George & Martha pattern, what is the name of that tune we just interrupted? "The Carioca" \* \* \* Harry, I knew you didn't play it right \* \* \* I told you \* \* \* [Laughter.] Let me look at the music \* \* \* I don't think that's right \* \* \* but anyway, Mr. Forbore, we're going to send you an easy running 18 inch Excello power lawn mower and I want to thank you very much for joining us out there in Milwaukee, Wisconsin \* \* \* Bye. [Applause.] Well, that means we go to another studio contestant \* \* \* and we have a lovely lady this time \* \* \* Your name, please.

CONTESTANT. Mrs. Jewel Landou \* \* \*

PARKS. Mrs. Jewel Landou and what do you do, Mrs. Landou \* \* \*

CONT. I'm just a housewife \* \* \*

PARKS. Just a housewife \* \* \* well, I wouldn't say that \* \* \* a little night off tonight.

CONT. Yes \* \* \* my husband \* \* \*

PARKS. Where's your husband?

CONT. My husband's home baby sitting \* \* \*

PARKS. Oh, I see \* \* \*

CONT. When I'm off, he's on \* \* \* [Laughter.]

PARKS. When you're off \* \* \* he's on \* \* \* that sounds like an electric switch \* \* \* to me \* \* \* Let's see if you can  
122 make contact now and tell us the name of that selection we just interrupted \* \* \*

CONT. The "Kiss of Fire" \* \* \*

PARKS. The "Kiss of Fire" is right \* \* \* [Applause.]

PARKS. Now here is the man who sings the blues because he doesn't take time out to eat breakfast \* \* \*

[Commercial.] [Kix singing commercial.]

ANNCR. People who are always weary always dreary are Nixies \* \* \* So different from active cheery Kixies \* \* \* Kixies are men of action who eat Kix \* \* \* food for action. Lively boys, girls and grownups \* \* \* who always eat breakfast built around a bowl of Kix. How fine everyone feels because Kix is an 83% energy food. Are Kix good? You bet! Crispy corn puffs so tender and tasty. Eat Kix \* \* \* food for action.

[Kix singing commercial.]

PARKS. All right, now here are June Valli and Dick Brown with a few musical ideas of their own.

(Music. \* \* \*) [Applause.]

PARKS. "Thanks For the Memory" OK here's one heard dozens of times \* \* \* listen carefully and tell me what's the name of this one?

(Music. \* \* \*) [Bell.]

PARKS. Stop the music. [Applause.] Yes, operator,  
123 where to now please \* \* \* We're calling Utica, New York \* \* \* to speak to? Miss Barbara Barkett \* \* \* All right \* \* \* hello, Barbara \* \* \* hello how are you? Good \* \* \* may I ask how old you are Barbara? 17 years old \* \* \* well, Barbara, what were you doing beside listening to Stop the Music when we called just now? Sitting on the sofa with your boy friend \* \* \* [Laughter.] I'll make it very fast \* \* \* Barbara, we're calling on Stop the Music and we have two beautiful wrist watches \* \* \* one a man's and lady's \* \* \* both styled by the Benrus Watch Co. \* \* \* what's the name of that song? "The Third Man Theme" that's right \* \* \* [Applause.] Which means, Barbara, if you know the title of our Mystery Melody prizes worth more than \$15,100 belong to you and here it is.

(Music. \* \* \* Mystery melody)

PARKS. Alright there you are \* \* \* Barbara Barkett \* \* \* and what is your answer? You don't know that \* \* \* all right, honey it was a pleasure to talk to you and we're going to send you along the Benrus wrist watches and give my best to the boy friend \* \* \* Thanks very much \* \* \* Goodnight. [Applause.]

PARKS. Now, before we continue with Stop the Music here's a message that will be of interest to all of you.

(Chiclets commercial.)

124 PARKS. You know everybody has a favorite town, right \* \* \* Well I'd like to tell you about a town that seems to be everybody's favorite. \* \* \* Harry, the introduction if you will please.

(Music. \* \* \*) [Applause.]

PARKS. Yes, sir \* \* \* "Pittsburgh, Pennsylvania" \* \* \* now we're going to try a touch of the light classics. \* \* \* So, Harry, lightly please.

(Music. \* \* \*) [Applause.]

PARKS. Now a romantic ballad as lovely as the girl that sings it. \* \* \* Here's June Valli.

(Music. \* \* \*) [Bell.]

PARKS. Stop the music. [Applause.] Yes, operator, where is our call to now please? Out to St. Louis, Missouri, and to speak to whom? Mrs. Lola Ryan \* \* \* Hello, Mrs. Ryan \* \* \* how are you? Well, isn't this quite a surprise. \* \* \* Mrs. Ryan. Too much. Well, who's at home listening with you Mrs. Ryan. Part of your family, I see. Well, Mrs. Ryan, this is Bert Parks on Stop the Music and we have a beautiful super 60 Tappan Gas Range with chrome lined oven and a lift off oven door \* \* \* do you know the name of the song June was just singing?

125 Ma'am \* \* \* you didn't listen to it! \* \* \* [Laughter.] Well you want to hear a little more? \* \* \* come on up here June \* \* \* would you sing a little more for Mrs. Ryan out there in St. Louis, Missouri \* \* \* you listening now, closely?

[Music. \* \* \*]

PARKS. Very nice, June \* \* \* all right, Mrs. Ryan out there, what is your answer? You don't know \* \* \* well, anyway we're going to send along to you a set of refreshing Kings Men Toiletries fired in 23 carat gold \* \* \* for Mr. Ryan and thank you for joining us in St. Louis, Missouri. [Applause.]

PARKS. Well, here's a gentleman from our studio audience. May I have your name, sir?

CONT. Solomon Joseph Topping.

PARKS. Mr. Topping and what do you do?

CONT. Main Superintendent of United States Lines Company.

PARKS. U. S. Lines Co.

CONT. Yes.

PARKS. Oh, I see \* \* \* that's the new ship the United States that's new \* \* \*

CONT. Just been launched. First lady of the American Merchant Marine.

PARKS. That's the one we've been reading so much about isn't it \* \* \* Captain.

CONT. That's right, sir. She's due here tomorrow.

PARKS. Yeah.

CONT. And due to sail on her maiden voyage July 1 to Southampton and Havre. You know I'm sure there's one question uppermost in most of our minds \* \* \* between us, how fast will the United States go?

126 CONT. Well, sir, she's about 990 feet long.

PARKS. About 990 feet long. Well, that's very interesting. Well, what I wanted to find out from you was just really what would be the top speed of this new ship the United States?

CONT. Well, sir, she has 12 decks. [Laughter.]

PARKS. Believe me that too was some information I was looking for, Captain. But to get back to the point \* \* \* how fast will it go?

CONT. Well, sir, she could be turned overnight in case of emergency into a troop ship.

PARKS. I see \* \* \* [Laughter.]

PARKS. Well, how are you Captain, you all right?

CONT. Yes, sir.

PARKS. Can you tell me the name of that song we just interrupted?

CONT. "You'll Never Walk Alone."

PARKS. "You'll Never Walk Alone" \* \* \* thank you very much and yes, sir \* \* \* [Applause.]

ANNCR. The past quarter hour of Stop the Music has been brought to you by the makers of Kix \* \* \* tasty crisp corn puffs \* \* \* food for action \* \* \* and the makers of Dentyne \* \* \* the gum with breath taking flavor \* \* \* and Beeman's Pepsin \* \* \* the gum that's great to chew and good for your digestion too.

(Music. \* \* \*) [Applause.]

127 PARKS. That was "Be Anything, But Be Mine" and before we continue playing the best game in radio—Stop the Music—we want you to pay particular attention to the following message.

ANNCR. Audience, who continues with the next portion of Stop the Music.

AUD. Old Gold.

ANNCR. Fine, Old Gold \* \* \* the cigarette that gives you a treat instead of a treatment. Yes, Old Gold, the cigarette that treats you better in every way because in every way it's a better cigarette \* \* \* smooth, mild, tasty \* \* \* Remember no other cigarette in America can match the nearly 200 years experience behind Old Golds \* \* \* and that's why no other cigarette in America can match the taste, the mild all around wonderful smoking pleasure of this fine and great cigarette. Smoke a pack

of Old Golds today and then see if we're not right when we say "for a treat instead of a treatment, have an Old Gold cigarette."

PARKS. Yessirree, and buy your Old Golds by the carton \* \* \* yes by the carton or by the pack \* \* \* Old Gold gives you a treat instead of a treatment.

PARKS. OK, June Valli and I have a song that's a real nice song. It's got something \* \* \* describes something that could happen to you and here we go.

(Music. \* \* \*) [Bell.]

PARKS. Stop the music. [Applause.]

128 Yes, operator, where to now please? Out to Detroit, Michigan, and to speak to whom? Mr. Richard Gilder \* \* \* how are you tonight \* \* \* hello \* \* \* how are you, Dick, everything all right? Pardon. You said just a moment. Hello, Dick \* \* \* yes \* \* \* Dick Gilder, how are you? Well, who was that just talking on the phone just now \* \* \* Oh that was your son and he wants you to be there to answer the question. Well, that's fine, Dick. All right, now this is Bert Parks calling on Stop the Music for Old Gold Cigarettes and we have, Mr. Gilder, from the Keystone Mfg. Co. a wonderful 8mm Olympic roll film movie camera and 500 watt precision projector for brilliant clear pictures \* \* \* do you know the name of that song June and I were just singing? "I Wonder Why \* \* \* no, that's not the title \* \* \* now try it again. Maybe your son can help you, Richard. Do you know? Any idea? He said just a moment \* \* \* all right. [Hums.] Hello Richard \* \* \* any word yet \* \* \* [Laughter.] Anything from the front? [Laughter.] Can't do it, huh, Richard \* \* \* well anyway we're going to send you three wonderful Dormyer appliances—a food mixer, toast maker and fry well and a treasure chest of Old Gold cigarettes \* \* \* and thank you for joining us \* \* \* Sorry you missed it. Goodnight. [Applause.]

129 PARKS. Well, we go to another studio contestant \* \* \* And may I have your name, young lady.

CONT. Florence Messinger.

PARKS. Miss Florence Messinger \* \* \* I see and where do you live Florence?

CONT. In Garden City, Long Island.

PARKS. Garden City and what do you do?

CONT. I'm a student at Adelphi College.

PARKS. At Adelphi College.

CONT. Yes.

PARKS. And what are you majoring in there?

CONT. Home Economics \* \* \* that's food testing and dietetics and things like that.

PARKS. You mean they're teaching you how to cook in college?

CONT. Yes.

PARKS. Well, that's wonderful. What's your favorite dish?

CONT. Chicken Fricassee \* \* \*

PARKS. Oh I love Chicken Fricassee \* \* \* wow \* \* \* I wonder if you'd mind helping us out \* \* \* what is your recipe for Chicken Fricassee?

CONT. Oh I open a can of Swansons' \* \* \*

PARKS. Open a can I see \* \* \* [Laughter.]

PARKS. You're probably getting BA in the Cans \* \* \* Now tell me Florence, can you tell me the name of that song?

CONT. "You're Just In Love"

PARKS. "You're Just In Love" is right \* \* \* and also a treasure chest of Old Gold cigarettes thank you \* \* \*

130 [Applause.]

(Music. \* \* \*) [Bell.]

PARKS. Stop the music. Oh the calls are coming thick and fast \* \* \* where to now operator? Out to Las Vegas, Nevada \* \* \* all right, to speak to? Mr. Kenneth Thaxton. Hello, Ken \* \* \* well I'm fine and what are you doing out there in Las Vegas, Ken. With the Greyhound Bus Co. Well, Ken this is Bert Parks and we're calling for Old Gold cigarettes and we hope you can tell us for a beautiful Westinghouse Clothes Dryer that leaves your clothes line for the birds \* \* \* the name of that tune. Ken, you don't know that one? Oh I'm awfully sorry but anyway for Mrs. Thaxton \* \* \* you're married aren't you \* \* \* we're going to send her a beautiful Kloret handbag to keep her fashionable for years to come and a treasure chest of Old Gold cigarettes \* \* \* thank you and give our best regards out there in Las Vegas \* \* \* [Applause.]

PARKS. Well, give another studio contestant a chance. Your name please.

CONT. Dan Bloom.

PARKS. Dan Bloom, and what do you do, Mr. Bloom?

CONT. I'm an accountant.

PARKS. An accountant. Are you in business for yourself?

CONT. No, sir, I work for an electronics plant in East Newark.

PARKS. I'm sorry I can't hear you.

131 CONT. I work for an electronics plant in East Newark, N. J.

PARKS. That's it \* \* \* young lady would you hold it up close \* \* \* that's fine \* \* \* so we can all hear it on the radio. \* \* \* Say, have you made plans for your vacation yet, Mr. Bloom?

CONT. Well, yes and no.

PARKS. What do you mean yes and no?

CONT. I've made a few and so has my wife. [Laughter.]



PARKS. Well, now tell me what do you want to do?

CONT. I'd like to get off somewhere for a couple of weeks and go fishing.

PARKS. Well, wait a minute, you say you're a fisherman \* \* \* what is the largest fish you ever caught?

CONT. Well I caught one a tuna, 275 lbs. \* \* \* and hooked and threw a 700 lb. and it got away.

PARKS. You're a fisherman all right \* \* \* yes, sir. [Laughter.]

PARKS. Now, Mr. Bloom, can you tell me the name of that song. \* \* \*

CONT. "Blacksmith Blues."

PARKS. The "Blacksmith Blues" is right. \* \* \* [Applause.]

PARKS. Now we'll continue with Stop the Music after this important message.

ANNCR. Smoothness, mildness, wonderful taste \* \* \* friends you find them in Old Gold cigarettes. When you light up an Old Gold you enjoy a blend of the world's best tobaccos superbly blended by America's foremost tobacco craftsmen. And  
132 remember this, when I ask you to smoke Old Golds I don't like to worry you with medical claims about irritation in nose and throat, why should I. I'm selling you a treat not a treatment. But still and all you might like to know that no other leading cigarette is less irritating, or easier on the throat or contains less nicotine than Old Golds cigarettes. Who says so? Me or the makers of Old Golds \* \* \* no, that conclusion was established on evidence by the United States Government. So enjoy your Old Golds \* \* \* enjoy all that smoothness, that mildness that delightful taste, ready and waiting for you in every golden pack of Old Golds \* \* \* yes, that's our story \* \* \* a marvelous smoke, a treat instead of a treatment \* \* \* Old Golds Cigarettes \* \* \* The next time you need cigarettes \* \* \* make it Old Golds. \* \* \*

(Music. \* \* \*) [Applause.]

PARKS. That was the "Karrie Dancers". Now a salute to the gallant corps of land and sea. Stand back for the fighting Leathernecks \* \* \*

(Music. \* \* \*) [Bell.]

PARKS. Stop the music. Yes, the Marine Hymn and stop the music \* \* \* hold everything \* \* \* we want to tell you about the rest of our jackpot \* \* \* you've already heard about your two week vacation in Miami Beach, a thousand dollars from Sweetheart Soap, Amelia Earhart luggage, a thousand dollars  
133 from Peter-Paul Zero Frozen Custard Dessert, four Schwim bicycles and \$500 from Bonny Belle \* \* \* Your fishing equipment from Wright & McGill and Judy the scarlet Macaw

from Tropical Hobby Land. And now \* \* \* let's listen to part two of our giant jackpot. \* \* \*

[Music. \* \* \*]

ANNCR. You'll come home to a beautiful new Futorian living room suite, including a highly styled modern Bellaire Sofa plus a full size lounge chair and ottoman in your choice of fabrics and colors \* \* \* and all pieces designed for distinctive living by the Futorian Mfg. Co. of Chicago.

[Music. \* \* \*]

ANNCR. A Storey & Clark piano \* \* \* instrument of musical perfection \* \* \* with the exclusive Storey mahogany sounding board in a style appropriate for your home. A treasured prize from the Storey & Clark Piano Co. of Chicago.

[Music. \* \* \*]

ANNCR. A beautiful 12 x 15 Grover classic leaf design carpet from the looms of Mohawk \* \* \* a newly styled Mohawk carpet to lend distinction to your room.

[Music. \* \* \*]

ANNCR. For your dining room a mahogany 18th century junior dining room suite by Craddock including a beautiful dining table to seat 12 and many occasional pieces all luxurious designed by the Craddock Furniture Corp.

[Music. \* \* \*]

ANNCR. And you'll be cool all summer long with a wonderful Snow Breeze residential modern air cooler and window adapter from the Farmer Mfg. Co. Yes, you will enjoy that snow cool comfort in your home with your Snow Breeze air cooler.

[Music. \* \* \*]

ANNCR. From the Westmoreland Silver Co. a solid sterling silver service for 12 in Westmoreland's famous George and Martha pattern in a mahogany tarnish proof chest \* \* \* a set further enhanced with the beautiful Westmoreland carving set candle-labra and 4 piece coffee service.

[Music. \* \* \*]

ANNCR. Three beautiful Westinghouse appliances \* \* \* first the famous Westinghouse laundromat, the automatic washing machine plus the gleaming clothes dryer that leaves your clothes line for the birds \* \* \* and in addition a beautiful modern Westinghouse refrigerator to glamorize your kitchen.

[Music. \* \* \*]

ANNCR. On your trip you'll wear a stunning Benrus wrist watch with a glittering diamond studded bracelet \* \* \* personally styled by Benrus with the famous 17-jeweled accurated movement \* \* \* a prize from the Benrus Wrist Watch Co. valued by them at \$2,000.

[Music. \* \* \*]

ANNCR. And a lovely diamond clasped strand of iridescent oyster grown Deltah cultured pearls all perfectly matched and hand mounted by pearl experts and valued at \$1,000 by the celebrated House of Heller.

[Music. \* \* \*]

ANNCR. A perfect gift for your trip to Florida \* \* \* a  
135 wonderful ensemble of six Koret handbags, including a lovely summer white all original designs, beautifully fashioned by Koret to keep you in style for many years to come. And to compliment your ensemble.

[Music. \* \* \*]

ANNCR. And a wonderful wardrobe of 12 lovely Yolande blouses \* \* \* plus a glamorous trousseau of Yolande lingerie \* \* \* all pieces beautifully fashioned with exquisite imported embroidery by Yolande of N. Y.

[Music. \* \* \*]

ANNCR. And to top it all off \* \* \* \$1,000 in cash to redecorate your kitchen from Beacon Wax \* \* \* the scrub resistant, nonrubbing floor wax that keeps your floors shining clean. A wonderful prize from Beacon Wax.

[Music. \* \* \*]

ANNCR. And there's the jackpot, Bert Parks.

PARKS. Ah, but Don, let's add to that jackpot right now.

ANNCR. All right, Bert. For dad a wardrobe of famous Top-O-Mart Clothes \* \* \* including 2 cool tropical worsted suits to wear in Florida plus sport coats and Top-O-Mart year 'round suits \* \* \* all with Top-O-Mart exclusive full fashion styling to keep you comfortable and well dressed at all times.

PARKS. Yes, there it is \* \* \* our giant jackpot \* \* \* now valued at more than \$15,700 and in a moment we'll play our mystery melody again \* \* \* and always remember on Stop the Music that jackpot will grow \* \* \*

136 AUD. And grow and grow and grow \* \* \*

(Music. \* \* \* Mystery melody.)

PARKS. Yes, the first man, woman or child to answer our call and identify that mystery melody will win every single prize in our giant jackpot \* \* \* Plan to be with us next Sunday night, same time, same station for Stop the Music \* \* \* with Harry Salter and the orchestra, Dick Brown, June Valli and yours truly, Bert Parks. Friends, good luck and good night and I'll be calling you.

(Music. \* \* \* )

ANNCR. Stop the music is a production of Louis G. Cowan and in association with Mark Goodson, under the supervision of Alfred Hollander and directed by Bob Reed. [Applause.]

ANNCR. Before saying so long, I, Don Hancock, would like to introduce Old Golds new and upcoming brother, Embassy Cigarettes. Embassy, the distinctively fine and distinctively milder, king size cigarette. Some folks prefer the regular size cigarette others go for the long cigarettes, but the folks who make Old Golds are broadminded, they feel that if some folks like to travel the longie route they ought to travel first class. So if you're now smoking king size cigarettes, may I suggest a change to Embassy \* \* \* the distinctively milder, king size, cigarette.

ANNCR. Stay tuned now for Drew Pearson with Predictions of Things to Come, immediately followed on most of these 137 stations by the gay comedy Meet Corliss Archer. Stay tuned.

ANNCR. This program came to you from New York.

This is ABC \* \* \* the American Broadcasting Company.

138

## STOP THE MUSIC—TV

April 17, 1952

LOUISE. Hello, I'm Anita Louise and this is my daughter Melanie. We're exchanging compliments about our hair. Last night we washed our hair with White Rain Lotion Shampoo.

MELANIE. Wasn't it fun, mommy.

LOUISE. Loads of fun, darling. White Rain makes such wonderful rainfall suds. Extra gentle to give loveliest rainwater results. White Rain is not a cream, not a dulling soap, not a drying liquid, but a wonderful new lotion shampoo. Gentle as rainwater.

MELANIE. Your hair looks pretty, mommy.

LOUISE. With White Rain your hair is never dull or dry, but naturally soft and silky, bright as sunshine. Use White Rain tonight and tomorrow your hair will be sunshine bright.

(White Rain jingle.)

(Music. \* \* \* )

ANNCR. It's Stop the Music and here's your master of musical ceremonies—Bert Parks.

(Music. \* \* \* ) [Applause.]

PARKS. Thank you very much ladies and gentlemen and in case some of you don't know how Stop the Music is played, here's Betty Ann Grove to give you an idea. Right here, Betty.

(Music. \* \* \* Grove \* \* \* ). [Bell.]

PARKS. Stop the music. All right, audience, all together, what was the name of that song?

139 AUD. Music Music Music.

PARKS. That's right, "Slow Poke" [Laughter.] And that's the way we play Stop the Music with Betty Ann Grove,

June Valli, Jack Haskel and Harry Salter and his orchestra. So stay right where you are friends as our telephone operators place calls throughout the country. You may be the winner of a Moore-McCormack cruise, a new Willys sedan and \$10,000 in cash. The first half hour of Stop the Music is brought to you by Prom, the exciting new home permanent that needs no neutralizer. Say, how long is it going to take for that camera to get set.

(Music. \* \* \*) (Prom musical commercial.)

PARKS. Yes, sir; you know they say that one of the best ways to avoid getting dizzy in high places is to keep your eyes straight out and look \* \* \*

(Music. \* \* \*)

PARKS. Stop the music \* \* \* [Applause]

PARKS. Oh what a beautiful morning \* \* \* oh what a beautiful \* \* \* hello, operator \* \* \* where to please? We're calling Detroit, Michigan, to speak to \* \* \* Mrs. Shirley Moth \* \* \* Hello, Shirley. How are you? Is that you right there? You look wonderful Shirley. How's your family? Everybody all right? Well, good. This is Bert Parks calling from Prom Home Permanent, and now for a roomy Westinghouse Automatic Electric Dishwasher that's safe for all your dishes and glass-  
140 ware \* \* \* what's the name of that song? Beg pardon!

"You Beautiful Doll" \* \* \* That's right. Good for you. [Applause.] All right, Mrs. Moth out there in Detroit, Michigan, we're going to play for you our Mystery Melody and remember your first answer counts, along with it goes \$10,000 in cash, that Moore-McCormack cruise. Are you ready? Here it is.

(Music. \* \* \* Mystery Melody.)

PARKS. All right, there you are. Mrs. Shirley Moth of Detroit, Michigan, what is your answer? Repeat that again. Oh, you don't know. Well, I'm awfully sorry. But anyway, Mrs. Moth, we're still going to send along to you that Westinghouse Dishwasher and in addition we're sending you Prom, the new easier home permanent that needs no neutralizer. Thank you. Good luck to you. [Applause.]

PARKS. (Biz.)

(Music. \* \* \*) [Applause.]

ANNCR. That was June Valli and Loch Lommond. And now Bert and Betty Ann meet a long way from home.

(Music. \* \* \* Parks & Grove.) [Bell]

PARKS. Stop the music \* \* \* [Applause.] Hello, operator, where to please? Baltimore, Maryland \* \* \* speak to?  
141 Mrs. Blanche Lathrope? Licely \* \* \* Hello, Mrs. Licely \* \* \* how are you \* \* \* Hope you're having fun with us, Mrs. Licely \* \* \* Did you have a nice Easter? Get a new hat? Complete outfit \* \* \* well that's wonderful. What does Mr.

Licely do? A stevedore. You have children? Two married sons? \* \* \* Well, Mrs. Licely, It's a pleasure to talk to you. This is Bert Parks calling for Prom Home Permanent. We have a beautiful super-6 feet Tappan Gas Range with chrome lined oven and removable oven door if you can tell me the name of the song Betty Ann and I were just singing. "Are You From Dixie?" You're right. That's it. [Applause.] All right, Mrs. Blanche Licely, it's your chance now to identify that Mystery Melody for us for all those wonderful prizes. Listen closely. Here it is.

(Music. \* \* \* Mystery melody.)

PARKS. Mrs. Licely down there in Baltimore, Maryland, do you have any idea of the exact title? "Pack Up Your Troubles" \* \* \* no, that isn't it. Harry said no. That isn't it. Well, anyway, Mrs. Licely, we're still going to send along to you that Tappan Gas Range and of course Prom, the new easier home permanent that needs no neutralizer. Thank you for joining us. [Applause.]

PARKS. Well now here's Jack Haskel, let's see if he can find that lucky number.

(Music. \* \* \*)

142 [Bell.]

PARKS. Stop the music \* \* \* [Applause.] We're going out to Ames, Iowa \* \* \* all right, and who is the party waiting to talk to us out in Ames, please? Miss Lois Drethen. Hello, Miss Drethen. I hope we pronounced your name correctly. Drethen \* \* \* fine \* \* \* and how are you Miss Drethen? And who's watching with you? Beg pardon? Kinda of weak and sitting down \* \* \* well good. You're nice and comfortable, huh. Who's watching with you, Miss Drethen? Your children. How old are they? Elaine is 13 and who \* \* \* Diane \* \* \* Who's that right there? No, he just moved \* \* \* he just moved \* \* \* Tell him to move this way a little \* \* \* that's Diane, isn't it, right there? That's right. You put on a little weight \* \* \* what \* \* \* wonderful \* \* \* had their hair permanented \* \* \* oh wonderful \* \* \* Prom no doubt \* \* \* yes. Well anyway, as you know, Mrs. Drethen, we're calling for Prom Home Permanents \* \* \* we have a new Sew Gem table model sewing machine with Suzy the Miracle Stitcher if you can just tell me the name of the song Jack was just singing. "The Wheel of Fortune" is right. [Applause.] All right, Mrs. Drethen, let's get on to that mystery melody \* \* \* \$10,000 in cash, a Moore-McCormack cruise and a Willys sedan \* \* \* all right Harry Salter, let's hear it.

(Music. \* \* \*) [Mystery melody.]

143 PARKS. All right, Mrs. Drethen, what is your answer please? You say that the title of the mystery melody is "We All Have Troubles of Our Own" \* \* \* It sounds familiar but that's not the one I have here, Mrs. Drethen \* \* \* Anyway we're still going to send along to you of course, that Sew Gem Table Model Sewing Machine and Prom, the new easier home permanent that needs no neutralizer \* \* \* Thank you and good luck to you. Bye. [Applause.]  
(Music. \* \* \*)

(FROM SINGING COMMERCIAL)

BARRIE. I want to show you my favorite permanent wave \* \* \* now come a little closer \* \* \* See this. I had a Prom and it was so easy because Prom needs no neutralizer \* \* \* This one wonderful Prom lotion is all you use \* \* \* Now you apply this as you roll your hair up in curlers in the ordinary way and thirty minutes later you just rinse with plain water and that's all the work you do. Now, see, your wave neutralizes automatically as your hair dries naturally on the curlers. No messy old neutralizer to bother with, just this one wonderful Prom lotion. Oh, here's the best news ever. Now you know that Prom's automatic neutralizing gives your hair a much prettier wave, lasts much longer than any other home permanent. Now, do you know why? I'll tell you. With ordinary home permanents, you know, you have to dab the neutralizer on the outside of the curl like this and sometimes  
144 that neutralizer fails to penetrate down to the inside of the curl. So if this happens you're liable to get little or no wave at all, or a scraggly little old end like that. 'Course this cannot happen with a Prom because Prom neutralizes automatically and completely the entire curl. This way you get a fine, long-lasting wave all through your hair and springy end curls like that. See the difference? Do you know that there's never been a permanent like Prom? Let me just show you. Let me just show you how springy these end curls really are. See that? Uh hugh. Now you know even if every other wave has failed, Prom is guaranteed to take beautifully every time and it's so much easier because it needs no neutralizer \* \* \* and it leaves your hair with a lovelier, longer-lasting wave because Prom neutralizes automatically. So get yourself a Prom home permanent. You'll look prettier with a Prom. [Applause.]

PARKS. Thank you very much, Wendy, and you know folks down in the hill country they judge a man by the size of his feet \* \* \* just look at right here \* \* \*

(Music. \* \* \*) [Applause.]

PARKS. That was Ralph McWilliams and Stretch Barton. And now, a moon, a tune and our own June.

(Music. \* \* \*) [Applause.]



ANNCR. If you know your flowers and your weather conditions \* \* \* you'll recognize "Orchids In the Moonlight"  
 145 \* \* \* And now let's watch and listen while Bert Parks brings home an uninvited guest.

(Music. \* \* \*).

PARKS. (Biz.) [Bell.]

PARKS. Stop the Music. [Applause.]

PARKS. Hello operator, where to, please? San Francisco, California. All right, and who are we going to speak to out there? Mrs. Marion Berman. Hello, Mrs. Berman. Fine. How's the weather out there. It's beautiful \* \* \* well you know it's been lovely in New York today too. Did you have a nice Easter? Well good. This is Bert Parks calling for Prom home permanent. We have a wonderful 35mm Argus Camera with its companion blower cooled slide projector if you can tell me the name of that song. "Be My Life's Companion" is what it is. Right you are. [Applause.]

PARKS. Now, Mrs. Berman, we're going to play for you our Mystery Melody and remember your first answer counts, because on that right answer rides \$10,000 in cash, a Moore-McCormack cruise and a brand new Willys sedan \* \* \* are you ready \* \* \* OK, Harry Salter.

(Music. \* \* \* Mystery Melody.)

PARKS. There you are, Mrs. Berman \* \* \* what is your answer? You say it's "Down By The Station" \* \* \* No, I'm  
 146 awfully sorry \* \* \* it probably does sound something like it \* \* \* anyway we're going to send you that Argus camera and projector and of course Prom the new easier home permanent that needs no neutralizer. Thank you and good luck. [Applause.]

PARKS. And now Betty Ann Grove offers vocal proof that bananas should never be kept in the refrigerator.

(Music. \* \* \*)

ANNCR. That was Betty Ann singing Banana Nica \* \* \* no I mean Managua Nicaragua \* \* \* And see if you can analyze this tune sung by June Valli and Jack Haskel with an assist by Dr. Murray Slam.

(Music. \* \* \*) [Applause.]

PARKS. I'll Buy That Dream \* \* \* Now here's a song coming up \* \* \* let's see if you know the title of this one as sung by Betty Ann Grove \* \* \* Right here.

(Music. \* \* \*) [Applause.]

PARKS. That was undoubtedly called "Boo Hoo." All right, let's test your wits on this one sung by Jack Haskel \* \* \* Here we go.

(Music. \* \* \*) [Applause.]

PARKS. Yessir. If you said "I Want A Girl Just Like The Girl That Married Dear Old Dad," you're exactly right \* \* \* You know, friends, the first half hour of Stop the Music is brought to you by Prom the new far easier home permanent that needs no neutralizer \* \* \*

GIRL. And here's some more wonderful news for you.  
147 Prom and only Prom comes in three different types for three different types hair. After all, some women have very easy to wave hair so they need Prom's Very Gentle. Some have hard to wave hair and they need Prom's Super \* \* \* and other's have normal to wave hair so they need Prom Regular. Get yourself Prom, the new home permanent that needs no neutralizer and has that just right lotion for your type of hair. And you'll look prettier with a Prom.

PARKS. Yessir. Well stand by friends for the next half hour \* \* \* Will someone crack that mystery melody and win all those prizes \* \* \* well don't go away \* \* \* because it can happen \* \* \* in just 30 seconds when we continue with the calls for the second half of Stop the Music.

(Music. \* \* \*)

ANNCR. This is the American Broadcasting Company.

(Music. \* \* \*)

PARKS. Welcome to Stop the Music folks and this is Bert Parks. We hope you'll play along with us and I mean of course Betty Ann Grove, June Valli, Jack Haskell, Harry Salter and his orchestra \* \* \* During the next half hour someone may identify that mystery melody and win that Moore-McCormack cruise, a brand new Willys sedan and \$10,000 in cash. It may even be you. Right now here is Mr. Old Gold himself, Dennis James. [Applause.]

JAMES. Thank you Bert, very much. Thank you. Ladies and gentlemen, I'd like to introduce at this time my two favorite  
148 girl friends, the Old Gold dancing cigarette pack and the little book of matches dancing to \* \* \* can't tell you the name of the song \* \* \* Tico Tico \* \* \* here they are.

(Music \* \* \*.)

JAMES. Well here it is \* \* \* Old Gold \* \* \* smoother, tastier, milder Old Gold \* \* \* the cigarette that gives you a treat instead of a treatment. Yes, Old Gold the cigarette that treats you better in every way because in every way it is a better cigarette \* \* \* It's smooth and mild and tastier \* \* \* Old Gold cigarettes \* \* \* the treasure of them all. [Applause.]

PARKS. Yessir \* \* \* in the game today the Dodgers defeated the Giants 4-0, which reminds us that the baseball season is here so we'd like to have you meet our lead-off batter \* \* \* Betty Ann Grove \* \* \* right here \* \* \*

(Music \* \* \* .) [Applause.]

PARKS. Oh sluggerooo, singing "Take Me Out To The Ball Game" \* \* \* You may not recognize these feet of Jack Haskel but the situation and the tune should be very familiar.

(Music \* \* \* .) [Applause.]

PARKS. Well, that boy's no slow poke \* \* \* Say, you know, everybody sings on Stop The Music except you folks. Well, we're going to give you an opportunity to do that. As you know, one of the important things about Stop the Music is that you can never sing the title because by so doing you tip off the con-  
149 testant. Here's what we're going to do. We have some cards here \* \* \* we're going to sing a one-word title song and every time we come to that one word I'll point to one of those cards and you folks in the audience sing along with me. And you folks at home, would you like to join us? Come on Harry, let's do it.

(Music \* \* \* .) [Bell.]

PARKS. Stop the Music. [Applause.]

PARKS. Wasn't that fun \* \* \* Hello operator \* \* \* where to? Huntington, West Virginia \* \* \* All right and speak to? \* \* \* Mrs. Marguerite Downey \* \* \* Hello, Mrs. Downey \* \* \* hello \* \* \* Hello, Mrs. Downey \* \* \* hello \* \* \* operator \* \* \* can't hear Mrs. Downey \* \* \* is she there \* \* \* Hello, Mrs. Downey \* \* \* oh there you are \* \* \* well, good \* \* \* how do you feel, Mrs. Downey? good \* \* \* hope you're enjoying yourself \* \* \* Good. This is Bert Parks calling for Old Gold cigarettes \* \* \* we have a modern Fashion Trend 5 piece bedroom suite beautifully designed in lime oak by Johnson Carper if you can tell me the name of the song that the audience and I were just singing \* \* \* Ma'am \* \* \* "Anytime" is right. \* \* \* [Applause.] Now, Mrs. Downey \* \* \* here's your chance to identify that mystery melody for all those wonderful prizes \* \* \* listen closely \* \* \* here it is \* \* \*

(Music \* \* \* Mystery Melody.)

PARKS. Now, Mrs. Marguerite Downey of Huntington,  
150 West Virginia \* \* \* what is your answer please? You don't know that \* \* \* well, anyway we're still going to send along to you that Johnson Carper bedroom suite and for you a treasure chest of mild, mellow Old Gold cigarettes \* \* \* A chest filled with pleasure for your enjoyment \* \* \* thank you very much. Goodbye. [Applause.]

PARKS. (Biz.)

(Music \* \* \* .) [Applause.]

PARKS. (Biz.) Hello, operator \* \* \* where to please? \* \* \* we're going to talk to whom please? Sandra Gall \* \* \* hello, Miss Gall \* \* \* how are you? Well good. Did I ask what you

do \* \* \* do you have an occupation \* \* \* Oh, I see \* \* \* you go to school \* \* \* where do you go to school \* \* \* Oh, high school. I see \* \* \* Well this is Bert Parks, we're calling for Old Gold cigarettes. Sandra, we have a deluxe 1952 Chill Chest by Reppco that fast freezes as far up as 285 lbs of frozen food. What's the name of that song that June Valli just sang. "The Boy Next Door" that's right. [Applause.]

PARKS. And now here's our Mystery Melody \* \* \* Harry.

(Music \* \* \* Mystery Melody.)

PARKS. All right, now if you get this one right remember \$10,000 in cash and a Moore-McCormack cruise, what's the name of that song? \* \* \* Don't you, Sandra? \* \* \* Well, any-  
151 way honey we're going to send along to you that Chillchest by Reppco and of course a treasure chest of mild mellow Old Gold cigarettes \* \* \* a chest filled with pleasure for your enjoyment \* \* \* thank you and good luck. [Applause.]

PARKS. Now, here's your neighbor and mine, Dennis James \* \* \* [Applause.]

JAMES. Thank you, Bert, very much \* \* \* thank you. You know I'm lucky to have this neighborly fence here at all because it's a wonder Louis throwing the ball didn't knock it down \* \* \* That's a kid that can hit everything but the window \* \* \* Speaking of these fences \* \* \* an awful lot of talk is over neighborly fence whether it's a backyard fence or a frontyard fence and sometimes it's very gossipy talk about "did you hear that Louis is pitching for the bloomer girls?" "or Judy Holliday's picture The Marrying Kind I saw last night and John and I liked it"

\* \* \* or maybe it's advice on how to bake a cake or something \* \* \* But I tell you, since we have the fence, I could kind of chat to you as a neighbor and talk to you about what I consider the very finest cigarette \* \* \* I've talked to you many, many months now and many years about Old Gold cigarettes and I'd like to just lean over the fence and say honestly and sincerely "try an Old Gold" \* \* \* Try it because in an Old Gold cigarette you'll find the world's best tobacco \* \* \* you'll find those tobaccos blended by the world's greatest tobacco craftsmen \* \* \*

152 tobaccos blended by the world's greatest tobacco craftsmen \* \* \* Here's a cigarette that gives you a treat instead of a treatment. The cigarette that treats you better in every way because in every way it is a better cigarette. Remember this too, it's the cigarette about which it has been said "No other leading cigarette is less irritating, easier on the throat or contains less nicotine than Old Gold Cigarettes." Now who said this? Me?

No \* \* \* the makers of Old Gold cigarettes? No sirree \* \* \* this conclusion was established on evidence by the United States Government. Yet what is it we talk about? We talk about pleasure \* \* \* that's right \* \* \* Deep down smoking pleasure \* \* \* Try an Old Gold yourself \* \* \* Find out if it isn't a really fine cigarette and if it isn't everything we say it is \* \* \* Old Gold cigarettes \* \* \* you'll love them. So long \* \* \* we'll talk to you soon. Bye bye. [Applause.]

PARKS. Now here's Don Pippin and an old piano \* \* \* a new tune, see if you know it.

(Music. \* \* \*) [Applause.]

ANNCR. Well, did you recognize that one? Don Pippin doing some fancy piano moving with "Noodlin' Rag" \* \* \* And now we're sure that you'll recognize this next one. It's a surprise for Bert from Betty \* \* \*

(Music. \* \* \*)

PARKS. Stop the Music. [Applause.]

153 PARKS. Yes, sir \* \* \* hello, operator \* \* \* where to please? Schenectady, New York, to speak to? Frank Hutton. How are you Frank? Well, I'm very well tonight, sir \* \* \* and as you know, we're calling for Old Gold cigarettes \* \* \* We have a beautiful 5 piece set of world famous Amelia Earhart luggage you'll carry with pride wherever you travel \* \* \* what's the name of that song? "People Will Say We're In Love" \* \* \* that's right \* \* \* [Applause.]

PARKS. Now we're going to play for you our Mystery Melody and remember your first answer counts \* \* \* \$10,000 in cash rides on this \* \* \* Ok, Harry Salter, let's hear it.

(Music \* \* \* Mystery Melody.)

PARKS. There you are, Mr. Frank Hutton of Schenectady, New York \* \* \* what is your answer? You don't know that one \* \* \* well, anyway, you've identified the first song correctly and so we're going to send along to you that set of Amelia Earhart luggage and, of course, a treasure chest of mellow, mild Old Gold cigarettes \* \* \* a chest filled with pleasure for your enjoyment \* \* \* thank you very much, sir, and good luck to you. Bye. [Applause.]

PARKS. And now here's Jack Haskel and our pony ballet \* \* \*

(Music \* \* \*) [Applause.]

154 PARKS. And that was "Blacksmith Blues" sung by Jack Haskel \* \* \* the blacksmith was Fred Thornton, the horse's head was Ralph McWilliams and Jimmie Nigron also participated \* \* \* Now \* \* \* [Laughter.] All right \* \* \* all right \* \* \* Now here's a message of importance for all cigarette smokers \* \* \*

ANNCR. Here's something you should know. The National Tobacco Tax Research Council says you give nearly two million dollars a year to your government in cigarette taxes \* \* \* every-time you buy cigarettes \* \* \* you give your federal government 8¢ a pack \* \* \* and most of you give three or four cents more to city and state governments \* \* \* That adds up to better than a 50% tax which is really paying up to the hilt. Yes, in buying cigarettes over half your pack goes for tax.

PARKS. Betty Ann Grove is really cleaning up these days \* \* \* see if you know the tune.

(Music \* \* \*) [Applause.]

PARKS. That was Betty Ann Grove in "A Good Man is Hard to Find" \* \* \* Now June Valli and Jack Haskell's favorite time is roller skating \* \* \* As a matter of fact, June is a very good skater until she sees Jack \* \* \* June be careful will you \* \* \*

(Music \* \* \*) [Applause.]

That's "Let's Take An Old Fashioned Walk" and now here's Betty Ann Grove as we play Stop The Music \* \* \*

(Music. \* \* \*) [Applause.]

PARKS. Well that was a little song called "Enjoy Yourself" 155 self" and we hope you're enjoying yourself Is June here?

June is not here \* \* \* June couldn't make it \* \* \* what's the name of the song? \* \* \* Do you know the title of the song la da dee \* \* \* Play it, Harry, let's go \* \* \* Ready \* \* \* go!

(Music \* \* \*) [Applause.]

PARKS. Stop the Music \* \* \* [Applause.]

PARKS. Yes, sir; Stop the Music \* \* \* we're still looking for the first man, woman or child in the USA to give us the name of that television Mystery Melody \* \* \* and now your attention, America \* \* \* get set for the melody that's still a mystery \* \* \* the tune that's haunting the country \* \* \* our television Mystery Melody. Here it is.

(Music \* \* \* Mystery Melody.)

PARKS. Yes, sir, that's the song all America is talking about \* \* \* the television Mystery Melody that can win you every prize in that giant jackpot \* \* \* which starts off with \$10,000 in cash and in addition a fabulous South American cruise aboard a Moore-McCormack luxury liner for 38 glamor filled days of swimming, deck sports and all the other cruise pleasure \* \* \* your Moore-McCormack liner affords. Including many festive evenings as you travel from New York to glamorous Rio de Janerio and Buenos Aires \* \* \*

ANNCR. And a beautiful 1952 Arrow Willys sedan fashionably designed for extra room and wide visibility and with Willys hurricane engine for smooth comfortable riding on any road.

156 ANNCR. And there's the jackpot, Bert Parks.

PARKS. Yes, there it is \* \* \* the giant jackpot ready and waiting for the first person in our television audience who answers our call next Thursday night and gives us the exact title of that television mystery melody \* \* \* And now, friends before we tell you about next weeks' Stop The Music \* \* \* here's a word from Dennis James.

JAMES. Da da da dee da \* \* \* if you want to think of a really fine cigarette just think of my little friend right over here \* \* \* let's look \* \* \* [Dancing cigarette pack and matches.] Yes, sir; Old Gold cigarettes for a treat instead of a treatment \* \* \* so long talk to you next week \* \* \* [Applause.]

PARKS. Well, plan to be with us friends next Thursday night when once again Old Gold cigarettes brings you Stop the Music—television \* \* \* be sure to tune Old Gold's other television shows \* \* \* The Original Amateur Hour and Down You Go. Consult your newspaper for time and stations \* \* \* and of course be sure to listen on Sunday to our radio Stop the Music and our radio mystery melody \* \* \* And so until we meet again, friends \* \* \* this is Bert Parks saying thank you very much \* \* \* I'll be calling you.

(Music. \* \* \* Parks \* \* \*)

ANNCR. Miss Grove's gowns by Ann Fogerty \* \* \* Miss Barrie's clothes by Ceil Chapman \* \* \* Of course, if you're in any way associated with Stop the Music you are ineligible to win prizes \* \* \* [Applause.]

157 (Muriel cigar commercial.)

(Music. \* \* \*)

ANNCR. The preceding program has come to you by special video recording \* \* \* This is the American Broadcasting Company.



160 In United States District Court

Civil Action No. 52-24

[File endorsement omitted.]

[Title omitted.]

*Notice of motion for summary judgment*

(Filed September 22, 1952)

Sirs: Please take notice that upon the amended complaint herein, the stipulation between the parties, dated September 16, 1952, the annexed affidavit of G. B. Zorbaugh, verified September 19, 1952, and all the other papers and proceedings heretofore filed and had herein, plaintiff will move the statutory three-judge District Court to be convened in the above-entitled action at such time and place as the Court may designate for summary judgment granting the relief demanded in the amended complaint, pursuant to Rule 56 of the Rules of Civil Procedure for the United

States District Courts, on the ground that there is no  
161 genuine issue as to any material fact and that the plaintiff is entitled to a judgment as a matter of law.

September 22, 1952.

CRAVATH, SWAINE & MOORE,

By ALFRED McCORMACK,

*A Member of the Firm,*

*Attorneys for Plaintiff,*

*15 Broad Street, New York 5, N. Y.*

To: Attorney General of the United States, Washington, D. C.;  
United States attorney for the Southern District of New York,  
United States Court House, Foley Square, New York, N. Y.;  
Federal Communications Commission, Washington, D. C.

164 In United States District Court

Civil Action No. 52-24

[Title omitted.]

[File indorsement omitted.]

*Notice of motion to dismiss, etc.*

(Filed September 23, 1952)

Sirs: Please take notice that upon the amended complaint herein and upon the annexed affidavit of Benedict P. Cottone, sworn to the 11th day of August 1952, and upon all the other papers and proceedings heretofore filed and had herein, the undersigned will move the statutory three-judge District Court to be convened in the above-entitled action at such time and place as

the Court may designate for an order dismissing the complaint or, in the alternative, directing that summary judgment be entered in favor of the United States of America and the Federal Communications Commission, defendants, on the grounds stated in the attached motions.

Dated: Washington, D. C., Sept. 22, 1952.

William J. Hickey,  
**WILLIAM J. HICKEY,**  
*Special Assistant to the Attorney General,*  
*Attorney for the United States of America,*  
 Benedict P. Cottone,  
**BENEDICT P. COTTONE,**  
*General Counsel,*  
 Richard A. Solomon,  
**RICHARD A. SOLOMON,**  
*Assistant General Counsel,*  
 Daniel R. Ohlbaum,  
**DANIEL R. OHLBAUM,**  
*Counsel,*

*Attorneys for the Federal Communications Commission.*

NEWELL A. CLAPP,  
*Acting Assistant Attorney General,*  
 JAMES E. KILDAY,  
*Special Assistant to the Attorney General,*

MYLES J. LANE,  
*United States Attorney for the Southern District of*  
*New York,*  
*Attorneys for the United States of America.*

165 To: Cravath, Swaine & Moore, Attorneys for Plaintiff,  
 15 Broad Street, New York 5, New York.

Copy received Sept. 22, 1952.

Cravath, Swaine & Moore.

166 In United States District Court

Civil Action No. 52-24

[Title omitted.]

[File endorsement omitted.]

*Motions to dismiss the complaint or, in the alternative, for*  
*summary judgment*

(Filed September 23, 1952)

Upon the amended complaint herein and upon the annexed affidavit of Benedict P. Cottone, sworn to the 11th day of August 1952, and upon all other papers and proceedings heretofore filed and

had herein, the defendants in the above-entitled cause move this Court that the amended complaint be dismissed or, in the alternative, for summary judgment in their favor.

A. The ground of the Motion to Dismiss the complaint is:

Plaintiff fails to state a claim upon which relief can be granted.

B. The ground of the Motion for Summary Judgment is:

The amended complaint, together with the exhibits thereto annexed, the affidavit submitted on this motion, and the other papers and proceedings heretofore filed and had herein, show that there is no genuine issue as to any material fact and that defendants United States of America and the Federal Communications Commission are entitled to a judgment as a matter of law.

Dated: Washington, D. C., September 22, 1952.

William J. Hickey,

WILLIAM J. HICKEY,

*Special Assistant to the Attorney General,*

*Attorney for the United States of America.*

Benedict P. Cottone,

BENEDICT P. COTTONE,

*General Counsel,*

Richard A. Solomon,

RICHARD A. SOLOMON,

*Assistant General Counsel,*

Daniel R. Ohlbaum,

DANIEL R. OHLBAUM,

*Counsel,*

*Attorneys for the Federal Communications Commission.*

NEWELL A. CLAPP,

*Acting Assistant Attorney General,*

167 JAMES E. KILDAY,

*Special Assistant to the Attorney General,*

MYLES J. LANE,

*United States Attorney for the Southern District of New York,*

*Attorneys for the United States of America.*

168

*Affidavit of Benedict P. Cottone*

DISTRICT OF COLUMBIA,

*City of Washington, ss:*

Benedict P. Cottone, being duly sworn, deposes and says:

1. He is the General Counsel of the Federal Communications Commission, and makes this affidavit in support of the Motion for Summary Judgment made by the United States of America and the Federal Communications Commission, defendants, and in opposition to the Motion for Summary Judgment made by the plaintiff.

2. He is familiar with the Commission's proceedings with respect to the promulgation of rules governing the broadcast of lottery information, and that the proceedings included the following:

(a) These proceedings concerning the promulgation of rules governing the broadcast of lottery information were instituted by the Commission's Notice of Proposed Rule Making, released August 5, 1948. Proposed rules interpreting Section 316 of the Communications Act of 1934, as amended, 47 U. S. C. Section 326, were appended to that Notice. The Section referred to prohibited the broadcast of "any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance."

(b) In the light of the prior removal of Section 316 from the Communications Act of 1934, as amended, and recodification of this section as Section 1304 of the United States Criminal Code, 18 U. S. C. Section 1304, the Commission issued, on August 27, 1948, a Supplemental Notice of Proposed Rule Making.

(c) Pursuant to the above Notices, briefs and comments were filed with the Commission by the Radio Council of National Advertisers, Inc.; Premium Advertising Associates of America, Inc.; Radio Features, Inc.; Louis G. Cowan, Inc.; Maryland Broadcasting Company, Licensee of Station WITH: Columbia 169 Broadcasting System, Inc.; National Broadcasting Company, Inc.; National Association of Broadcasters; Pierson and Ball; Arthur W. Scharfeld; and American Broadcasting Company, Inc., plaintiff in this action.

(d) On October 19, 1948, oral argument was held before the Commission en banc, in which National Association of Broadcasters; Maryland Broadcasting Company; Radio Features, Inc.; Radio Council of National Advertisers; Columbia Broadcasting System, Inc.; National Broadcasting Company, Inc.; W. Theodore Pierson; Arthur W. Scharfeld; Simons Broadcasting Company; Louis G. Cowan, Inc.; and American Broadcasting Company, Inc., plaintiff in this action, participated.

(e) After consideration of the briefs and comments filed, and of the oral arguments, the Commission released, on August 19, 1949, its Report and Order promulgating Sections 3.192, 3.292, and 3.692 of its Rules and Regulations, to enjoin the enforcement of which this action is brought. The Report and Order specified that these rules were to become effective on October 1, 1949. Commissioners Coy, Chairman, Hyde, and Jones did not participate in the adoption of the Report and Order of August 19, 1949, and Commissioner Hennock dissented from its adoption. By its Sixth Report and Order adopted on April 11, 1952 in Dockets No. 8736, et. al., the Commission renumbered Section 3.692 as Section 3.656.

(f) The rules appended to the Report and Order of August 19, 1949 provide that no authorization for the operation of a broadcast station will be granted if the applicant proposes to follow or continue to follow a policy of broadcasting or permitting the broadcasting of any program violative of Section 1304 of the United States Criminal Code. The rules further set forth with specificity certain types of programs which the Commission will in any event consider as falling within the provisions of that statute.

(g) This action and a similar action brought in the District Court for the Northern District of Illinois having been commenced, a temporary restraining order suspending the effectiveness of the rules here in issue with respect to the parties in litigation having been issued by the District Court for the

170 Northern District of Illinois on September 13, 1949, and this Court having decided on September 19, 1949 to issue a similar order, the Commission, on September 21, 1949 issued an order postponing the effective date of said rules until at least thirty days after the ultimate determination of these actions.

3. A certified copy of the proceedings before the Commission in Docket 9113 (In re Promulgation of Rules Governing Broadcasting of Lottery Information) is filed herewith and incorporated herein by reference as Exhibit A.

4. Plaintiff broadcasts one or more programs which contain features comprehended by one or more of the rules in issue in this case. After such rules become effective, the failure of plaintiff to discontinue the broadcasting of any or all of such programs would result in setting for hearing applications for renewal of licenses filed by plaintiff and, upon a finding that such programs have been or will continue to be carried, such applications would be denied in accordance with the policy set out in the rules in issue.

5. Attached hereto as Exhibits B and C are true photostatic copies of letters to the Commission dated, respectively, April 4, 1940 and April 11, 1940, and enclosures, received from radio station WGN, Inc. with respect to changes in the format of the radio program called "Musico" which were made prior to April 29, 1940.

6. Affiant submits, in response to the contentions of the plaintiff, that:

(a) The Order and the Rules in issue are a proper application of the public policy announced by the Congress of the United States which the Commission must consider in fulfilling its duties under the Communications Act of 1934, as amended, and since denial of a license on the ground that the public interest would not be served by a grant is authorized by Sections 307, 308, 309, and 312 of the Communications Act, the promulgation and enforcement of the Order and Rules in issue are not in contravention of Section 9 (a) of the Administrative Procedure Act;

(b) The Commission in determining the qualifications of an applicant to hold a broadcast authorization may consider  
 171 the doing of acts which constitute a violation of a criminal statute of the United States which expresses public policy in the broadcasting field as a ground for determining whether the public interest would be served by the grant of a license;

(c) The Order and the Rules in issue are a proper and reasonable exercise of the Commission's functions under the Communications Act of 1934, as amended;

(d) The Order and the Rules are, as a matter of law, a correct interpretation of Section 1304 of the United States Criminal Code;

(e) The Order and the Rules do not violate Section 326 of the Communications Act of 1934, as amended;

(f) The Order and the Rules were issued in accordance with the Commission's Notice of August 27, 1948, after consideration of filed comments and briefs and an oral argument in which all interested parties participated, and were duly published in the Federal Register (14 F. R. 5429, September 1, 1949); accordingly the Order and the Rules in issue were promulgated in accordance with the provisions of Section 4 (a) and (b) of the Administrative Procedure Act;

(g) The Order and the Rules are not inconsistent with the provisions of Sections 5, 7, and 8 of the Administrative Procedure Act; and

(h) The Order and the Rules do not violate any of the provisions of the Constitution of the United States or of the Amendments thereto.

7. Affiant submits that Exhibits A, B, and C are relevant to the above issues sought to be raised and that they show that the Order in issue is within the Commission's authority conferred by the Communications Act of 1934, as amended; that it is in accordance with the Commission's Notice of August 27, 1948, pursuant to which an oral argument on which the Order is based was held; that it is proper and reasonable and in the public interest, convenience and necessity; that it is not violative of any of the provisions of the Constitution of the United States; and that  
 172 there is no genuine issue as to any material fact.

Benedict P. Cottone.

BENEDICT P. COTTONE.

Subscribed and sworn to before me this 11th day of August, 1952.

[SEAL]

FOREST L. McCLENNING,

*Notary Public.*

My commission expires January 15, 1953.

173 *Exhibit B to affidavit*

LAW OFFICES OF KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS

NATIONAL PRESS BUILDING  
WASHINGTON, D. C.

Cable address; "CALD"

Louis G. Caldwell  
Hammond E. Chaffetz  
Howard W. Vesey  
Reed T. Rollo

Resident partners

Donald C. Beelar  
Percy H. Russell, Jr.  
Edward K. Wheeler  
James A. Norman

Main office  
33 North La Salle Street  
Chicago, Illinois  
APRIL 4, 1940.

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D. C.

Re: "Musico"

GENTLEMEN: By letter dated March 12, 1940, WGN, Inc., Chicago, Illinois, advised the Commission that the contract covering the "Musico" program which expired on March 15, 1940, would not be renewed unless all features of the program which might be considered to import the element of chance were eliminated from the program.

For your further information we wish to advise that the program was completely revised so as to eliminate all features which might be considered to import the element of chance, and the contract with the sponsor, National Tea Company, was renewed covering the revised program.

Continuities of the revised or "New Musico" as broadcast on Friday evening, March 22, and Friday evening, March 29, 1940, are enclosed herewith for your information as well as a letter dated March 28, 1940, from B. B. Harris of the Kastor Advertising Agency which handles the account and a letter dated March 28, 1940, from James Holtzapple, Manager of the Lloyd D. Herrold and Associates Contest Administration, the independent judging agency which judged the contest. These two letters, each addressed to Mr. Keith Masters of the Chicago office of Kirkland, Fleming, Green, Martin & Ellis, contain information relative to the number of telephone calls received and the manner in which entries were judged for the contest of March 22, 1940.



The details of the program as broadcast on March 22, 1940, are as follows:

The Musico cards have printed on them five rows of squares with five squares in each row. Song titles appear in four of the five squares in each row and the fifth square in each row is blank.

The cards are available, free of charge, at all of the stores of the sponsor, at the studios of WGN, and to some extent are also distributed from house to house.

174 All cards distributed are capable of completing one row, i. e., during the course of the program sufficient tunes are played to enable any contestant who identifies the titles to check four squares in a row on his card.

During the course of the program one original unnamed composition is played and the contestants are instructed to name the composition and to insert their suggested title in any blank square on their cards, thus completing a row.

All contestants who successfully complete any row on the card are eligible for a prize. Those who wish to compete for a cash prize are instructed to telephone Harrison 6912 at any time up to 10 p. m. of the night of the program (the program is broadcast from 8 to 8:30 p. m.). The fact that there is no need to hurry in making the telephone call is stressed in the continuity. Those who desire to compete for a merchandise prize are instructed to deposit their entries at the closest store of the sponsor before 6 p. m. of the following day.

If a contestant telephones in order to compete for a cash prize, he is not eligible to compete for a merchandise prize.

The telephone entries (those competing for cash prizes) are judged by an independent judging organization whose staff reads and gives careful consideration to every entry and selects the winners on the basis of originality, suitability and aptness of thought of the suggested song title for the original composition. The names of the winners are announced over Station WGN at 10:30 p. m. of the evening of the broadcast and the prizes are immediately dispatched by Postal Telegraph money orders.

The entries deposited at the stores of the sponsor (those competing for merchandise prizes) are judged by the same independent judging organization and in the same manner as the cash prize entries, and the winners are notified by mail during the following week.

In case of ties, duplicate prizes are awarded.

In the formulation of the above-described plans it was recognized that a possible element of chance might be involved in that

portion of the contest requiring telephone calls, and, accordingly, every precaution was taken to make it possible for all  
 175 contestants who so desired to complete their calls. Twenty-five telephone operators and twenty-five telephone lines were made available. Contestants were given until 10 p. m., i. e., one hour and a half following the close of the program, to complete their calls, and were advised that speed in completing the calls was not a factor in determining the winners. Prior to the program it was the unanimous opinion of all those connected with the program in any way, including the telephone company that supplied the lines, that there would be no difficulty in completing all calls. Unfortunately, however, it developed that the available facilities and time allowed were not sufficient to accommodate all incoming calls.

Immediately following the broadcast of March 22, 1940, it was decided to eliminate telephone calls from the contest entirely in order to remove the possible chance element thus involved. However, rather than eliminating the calls entirely without advance notice to the public, the following plan was conceived:

For the program of March 29, 1940, only twenty-five merchandise prizes were to be awarded to those making telephone calls, with all contestants desiring to compete for the cash prizes and 1,000 merchandise prizes being required to deposit their entries at the nearest store of the sponsor. Twenty-five operators and twenty-five telephone lines were to be made available for such calls as were made and the time limit in which to make the calls was to be extended for an additional half hour, i. e., until 10:30 p. m.

This change obviously discouraged the making of telephone calls and as a matter of fact substantially reduced the number of calls that were attempted. However, even with the reduced number of calls the available facilities were found to be inadequate. As a consequence the telephone calls will be eliminated entirely beginning with the next program on Friday evening, April 5, 1940. With the telephone calls eliminated all entries are to be deposited at the stores of the sponsor.

With the exception of the elimination of the telephone calls the details of the program to be broadcast in the future are the same as above-described for March 22, 1940.

If any further information is desired concerning this matter, kindly communicate with the undersigned.

Very truly yours,

WGN, Inc.,  
 By REED T. ROLLO,  
*Its Attorney.*

176 H. W. KASTOR & SONS ADVERTISING COMPANY,  
INCORPORATED

Chicago, New York, St. Louis

CHICAGO

London Guarantee Building

MARCH 28, 1940.

MR. KEITH MASTERS,  
McCORMICK, KIRKLAND, FLEMING,  
MARTIN, GREEN and ELLIS,

*33 North LaSalle Street, Chicago, Illinois.*

DEAR MR. MASTERS: In accordance with your telephone request of this morning, wish to inform you that on the broadcast of Musico on March 22, 1940, there were 1734 telephone calls received between the hours of 8:00 o'clock and 10:00 o'clock, P. M. Of these calls, 1350 had correctly checked a row across on a Musico card and submitted a song title for the unnamed song played during the program in three words. The telephone calls were handled by twenty-five special operators.

Six associates of Professor Herrold were present and they read the 1350 song titles submitted by the contestants. From these entries, they selected the five cash prizes and the winners were announced from the station at 10:30 o'clock, P. M., as previously announced during the program.

Professor Herrold is writing you a letter outlining the basis upon which his associates judged the entries, both on the telephone and for grocery bags.

I trust that this will give you the information you desire.

Yours very truly,

H. W. KASTOR & SONS, ADVERTISING  
COMPANY,  
B. B. Harris.  
B. B. HARRIS.

LLOYD D. HERROLD AND ASSOCIATES

CONTEST ADMINISTRATION

Howard-Clark Building, Chicago—Telephone Briargate 8027

MARCH 28, 1940.

MR. KEITH MASTERS,  
KIRKLAND, FLEMING, GREEN AND MARTIN,  
33 North LaSalle Street, Chicago, Illinois.

DEAR MR. MASTER: This is to certify that we have examined 1,350 entries received for the telephone contest of Musico which was broadcast on March 22, 1940. Entries were judged on the basis of originality, suitability, and aptness of thought. Five entries were selected by a staff of preliminary judges and myself to receive the cash awards.

We also examined 166,667 entries which were sent to us by the National Tea Company. These entries had been deposited in boxes in the stores by the contestants. From the above number we selected 1,000 entries to receive the bag of grocery prizes. The judging was done on the basis of originality, suitability, and aptness of thought.

In judging a contest of this kind our first step is to open and count all entries. The entries are then read by a staff of experienced readers. These readers select the best entries as they read and then meet as a group to go over the selected entries to further reduce the number of final judging. After going over these remaining entries many times the writer personally selected the 1,000 grocery winners and the winners of the cash awards.

May I assure you that each and every entry was read and given careful consideration by our experienced staff.

Very truly yours,

LLOYD D. HERROLD AND ASSOCIATES,  
James Holtzapple,  
JAMES HOLTZAPPLE, *Manager*.

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*Exhibit C to affidavit*

LAW OFFICES OF KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS

NATIONAL PRESS BUILDING  
Washington, D. C.  
Cable address "CALD"

Louis G. Caldwell  
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Resident Partners

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Percy H. Russell, Jr.  
Edward K. Wheeler  
James A. Norman

Main Office  
33 North La Salle Street  
Chicago, Illinois  
APRIL 11, 1940.

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D. C.

Re: "Musico"

GENTLEMEN: Further supplementing my letter of April 4, 1940, concerning the revised Musico program being broadcast over Station WGN, I submit herewith on behalf of WGN, Inc., a copy of the continuity of Musico as broadcast on Friday evening, April 5, 1940. It will be noted that this continuity eliminates telephone calls entirely from the program.

Very truly yours,

WGN, Inc.,  
By REED T. ROLO,  
*Its Attorney.*

179 H. W. KASTOR & SONS ADVERTISING COMPANY, INC.  
RADIO DEPARTMENT

Client: National Tea Company.  
Product: National Food Stores.  
Program: No. 29—Musico.  
Talent: Two Announcers.  
Date of Broadcast: Friday, April 5, 1940.  
Time: 8:00—8:30 p. m.  
Outlet: WGN—Chicago.  
Comments on Broadcast:  
Commercial Content: Roller Skate Offer.

Word Count: 440.

Alteration No. 1.

Pages 2 and addition of Page 2A.

Date written: April 5, 1940.

Important! Special instructions! This alteration takes the place of corresponding pages in your copy of this continuity. Please compare page numbers carefully, insert these new pages, and destroy the old ones.

Alteration notes: Alteration consists of rewording rules.

180 ORCHESTRA. Opening theme \* \* \* dim for  
BUSINESS. (Crowd noise.)

ANSON. (Address through megaphone effect) Welcome one and all to radio's most fascinating and exciting game—Musico—featuring Harold Stokes and his orchestra, Pierre Andre, and your Master of Musico—Bill Anson! \* \* \* Let's go Musico. [Applause.]

ORCHESTRA. Quick segue into new theme.

ANDRE. Good evening, everyone! Here are the big cash winners of Musico last week. William Sonnenburg, 9644 Brandt Avenue, Oak Lawn—the big \$200 gold award. Mrs. Foster Bachman, W. Michigan Avenue, Marshall, Michigan, \$50.00. Carol Chase of 7048 Washtenaw Avenue, Chicago, \$25.00. Perle Palmer of 311 Jefferson Street, La Porte, Indiana, \$15.00; and Mrs. Amelia Frost of 304 Park Avenue, St. Charles, Illinois, \$10.00, and 1,000 grocery bag winners. (Quick applause.) Yessir, this is your Musico, with more fun, thrills, more prizes and still more prizes—and a bigger chance for everyone! Musico, a copyrighted feature, is brought to you every Friday at this time by the National Food Stores, and is played with Musico cards which you get absolutely free at all National Food Stores, in meat and grocery departments, and which are distributed house to house as well as at Station WGN. You don't have to buy a thing. Musico cards are free. Play with more than one card—increase your chance of winning!

ORCHESTRA. New theme up and out.

ANDRE. And here's your Master of Musico, Bill Anson.  
[Applause.]

181 ANSON. Thanks, Pierre, and a very good evening to you, Musico friends. Now please listen carefully while I give you the rules of our big Musico. As the orchestra plays a song, identify it and check it off on your cards. As soon as you have correctly checked four songs across any one line, you are eligible to compete for one of tonight's big cash prizes—or for one of the 1,600 big shopping bags of groceries—not a thousand—there are 600 more this week—that's 1,600 big shopping bags of groceries.

Only entries dropped into Musico boxes or mailed can compete. Please don't phone. There are five cash prizes tonight. Here they are: First prize is the big gold award of \$200.00 \* \* \* that's right—\$200. Other cash prizes are \$50.00, \$25.00, \$15.00, and \$10.00.

Play as many cards as you wish, friends. Remember if you aren't able to check out a line on the one card—by using more than one you increase your chances of checking out a line and you may win more than one prize. Now—during tonight's game, Harold Stokes and the Orchestra will play a new, original, and untitled composition.

182 ANSON. All you have to do is to give this song an original name which you write down in the blank space on your card to complete a full line across. Your title for tonight's original song must be four words—that's four words—and must be all about your best girl. And man, that should be easy! Now is that all clear? All you have to do is to check four songs across any one line on your card and write your original song title in the blank space to complete the full line. Next, write your name and address on the back of your card and drop it in the Musico prize box in your National Food Store tomorrow, Saturday, April 6, before 6 p. m. Please don't phone. Just drop your card in at your National Food Store. Increase your chances and this doesn't mean an extra trip for you because you can pick up

183 next week's cards at the same time. The winner of the big \$200.00 gold award, and the winners of the other cash awards and the one thousand 600 grocery bags will be notified by mail before Thursday, April 11, at 6 p. m. Postal Telegraph messengers will deliver Postal Telegraph money orders to the cash winners. So look for those big surprises! Enter as many cards as you wish, friends, and increase your chances of winning!

ORCHESTRA. Old Theme Up Briefly and Under

ANDRE. This is Pierre Andre again reminding you that tonight's big prizes are \$200.00—the big gold award; \$50.00, \$25.00, \$15.00 and \$10.00 and more than one thousand 600 big bags filled with delicious groceries. To compete for them, drop your card in the Musico Prize Box in your National Food Store tomorrow, Saturday, April 6th, before 6 p. m. Increase your chances of winning—use more than one card. A recognized group of judges will select winning song titles. Entries will be judged for originality, suitability and aptness of thought. Duplicate prizes will be awarded in case of ties and no entries will be returned. Decisions of the judges are final. Entries, contents and ideas therein become the property of the National Tea Company. All parties entering the contest give the National Tea Company permission



to use their name, address, and title submitted for advertising and publicity purposes. Remember—it is possible to win with every Musico card you get. And now—here comes your Man Friday, again your Master of Musico, to start the fun. Bill Anson.

ANSON. And start the fun isn't even the half of it, Pierre!  
 'Cause there's fun, thrills, and surprises, you know; on Na-  
 184 tional's big game—Musico.

ORCHESTRA. In an Old Dutch Garden.

ANSON. Well—no doubt most of you guessed that one easily—the title of that song was In an Old Dutch Garden \* \* \* if you have In an Old Dutch Garden on your card, put a big X right over it—because that's how you play Musico. But from this point on, you're going to have to figure out the names of the songs for yourself. Now the idea is to fill a row—across on National's Musico.

ORCHESTRA. On the Isle of May (special arrangements \* \* \* no hints).

ANSON. Now—here he comes—that smiling, debonair Man-about-Music—our genial musical conductor—Harold Stokes. [Quick applause.]

HAROLD. Good evening, Musico friends. I'd just like to tell you that my boys and I have one or two little musical surprises in store for you tonight—and we hope you'll enjoy them.

ANSON. That's great, Harold \* \* \* And I think it's wonderful, too, how happily you and the boys in the band get along.

HAROLD. Well, Bill—that's because we all speak the same language—

BAND. (Short single sentences in as many languages as possible.)

ANSON. All speak the same language, eh?

HAROLD. Well—er—when we're playing pinnoche—yes!

ANSON. (Laughing.) Well, I don't know much about pinnoche—

HAROLD. So the boys tell me!

ANSON. —but I do know the language of music is universally understood. Especially when it's beautiful music like we have in this next number. It's National's radio game, you know:  
 185 it's bigger and better—Musico.

ORCHESTRA. Over the Rainbow.

ANSON. And how are you Musico tune detectors making out? Are you filling out a line? That's the idea—and that's how you win New Musico. And what prizes we have again tonight! Five—that's five big cash prizes starting with the big \$200.00 gold award—and one thousand 600 big bags full of groceries. When you have filled a line across and written in your title for tonight's original song, drop your card in the Musico prize box at your

National Food Store tomorrow before 6 o'clock. Submit as many cards and titles as you like—and dropping your cards at your National Store makes it much easier for you to win and gives everyone a swell chance at those big prizes. There's lots of cash and groceries, so; come and get 'em with Musico.

ORCHESTRA. In a Little Spanish Town.

ANSON. And now we come to the number I'm sure you've all been waiting for—tonight's original song for which you Musico tunesmiths are to write an original title. I think Harold Stokes has something to say about this \* \* \* Harold?

HAROLD. Indeed I have, Bill. I'm sure all of you will be most interested to hear that tonight's original tune was written by none other than my good friend and colleague, Griff Williams. Griff, I understand, plans to use this song on the networks from the Stevens Hotel in the very near future.

ANSON. Well! And you know what that means, don't you, folks? It means that the Musico tunesmiths sending in 186 the winning \$200.00 gold award title will automatically share equally—with Griff Williams—in any and all royalties the song may earn. Think of it! Your winning song title may earn you hundreds of dollars—or it might start you on a profitable song-writing career. Tonight's song title must be in four words—four words—and be all about your best girl. And that should be easy! Can't you just see her? \* \* \* Twinkling, smiling eyes; an adorable little nose and cute, cupid's bow mouth \* \* \* and maybe she had dimples when she smiles. She's a man's ideal—she's the best girl! \* \* \* Your title must be in four words, you know; it's the original song on Musico.

ORCHESTRA. Original song (2 choruses).

ANSON. And how did it strike you? Couldn't you just picture her? The best girl. Mm-mm! Now let me remind you, folks, when you've checked your row across and written in your original song title to complete the row, write you own name and address on your card and drop it in the Musico prize box at your National Food Store before 6 p. m. tomorrow—Submitting your entries in this way makes it easier for everyone and gives every Musico player a swell chance to win one of those big cash and grocery prizes. Play as many cards as you wish. If you can't check out a line on one—you may on another—and you'll have more chances of winning. Harold and the boys will play the original song a little later in the program. The prizes are really big, you know; on National's game—Musico.

ORCHESTRA. One cigarette for two.

187 ANSON. And that, my friends, is a Scotchman's idea of a swell tune. Remember now—there are five big cash prizes on tonight's game. The big gold award of \$200.00; and four

others, \$50.00; \$25.00, \$15.00 and \$10.00 and those one thousand 600 big shopping bags of high-grade groceries that are well worth winning. You write a title and fill a row, to win big prizes on Musico.

ORCHESTRA. Anchors Aweigh.

ANSON. Comes the time now for one of Harold Stokes' musical surprises he promised you earlier in the evening. Just about now, Handsome Harold is mussing up his hair as he dons the old squeeze box—piano-accordion to you—to give you Musico tune-smiths a real treat.

TRUMPETS. (Laughing effect.)

ANSON. And I see your band is right behind you, Harold!

HAROLD. Yeah—sixteen mice and a man!

ANSON. Don't let 'em kid you, Harold. And now, ladies and gentlemen, Harold Stokes on the accordion playing—Musico.

SOLO. Angela Mia \* \* \* (No hints.)

ANSON. Friends, if you heard any noises that sounded as if they didn't belong in the solo, that was the pleats of Harold's accordion picking the buttons off his vest every time he squeezed it. And how are those song titles coming? You're getting lots of them? That's great because you can include a different title with every row you check across on as many Musico cards as you have. Play more cards—win more! So now—let's go with Musico.

ORCHESTRA. Goodnight Sweetheart.

188 ANSON. Now, while the maestro prepares appropriate music—here comes Pierre Bumpsadaisy Andre, who's a good skate in spite of a few loose wheels. Howya, Champ!

ANDRE. All that so-called humor on the part of Mr. Anson means I'm going to tell you mothers how you can get your children a pair of genuine Irving Jaffee Olympic Champion roller skates for only 99¢. Yes, actually only half the regular nationally advertised price of \$1.99—when you purchase \$3.00 worth of groceries from your favorite National Food Store. These are sturdy, nationally sold and nationally advertised skates, designed and named after the greatest skater the world has ever known—Irving Jaffee. And they're sold in better stores all over the country at the nationally advertised price of \$1.99. They're long-lasting, built of strongest type heavy steel—have ball bearing wheels and extra heavy rubber cushion shock absorbers—and are adjustable to any boy or girl from five years of age up to the size of an adult. All you do to get them is get a special Irving Jaffee Olympic Champion roller skate card absolutely free, at your favorite National Food Store. Buy any groceries you want from now until May 15th. With each purchase your card will be punched. When you have completed \$3.00 in purchases at National's regular low, money-saving prices, you will be given a pair of these marvelous

skates at one-half the regular price—99¢. Remember, this offer expires May 15, 1940. So get your Irving Jaffee Olympic Champion roller skate card tomorrow morning—without fail. Now Bill Anson has a word for the younger members of our audience.

ANSON. You bet I have. And say, kids! Just wait till you get a glimpse of these wonderful skates. Boy, how proud you'll be to go zipping and zooming down the street on these ball-bearing balloon-tire wheels! And say—they have special exclusive patented wing-toe clamps that fit any shape of shoe without tearing or coming off. Boy! Are those clamps speedy looking! What's more—each skate is further equipped with genuine lambs-wool ankle protectors—and heavy genuine leather straps with the autograph of Irving Jaffee on each and every one. So—boy, oh, boy! Don't miss this special chance to get Irving Jaffee Olympic Champion roller skates. Have your mother get one of these Irving Jaffee roller skate cards at your nearest National Store tomorrow morning. And be sure you get your Olympic Champion roller skates before this wonderful offer ends, May 15th. Don't miss out. And now let's get on with the show—It's National's game—Musico.

ORCHESTRA. Small Fry.

190 ANSON. And were you Musico tunesmiths able to recognize that one? Remember—as soon as you've checked four songs across any row on your Musico cards, write in your title for tonight's original tune by Griff Williams. Then write your name and address on the backs of your cards—you may play as many as you like—and drop them in the Musico prize box at your National Food Store tomorrow before 6 o'clock. Compete for that \$200.00 gold award. And all the prizes have value, you know; on National's big game, Musico.

ORCHESTRA. Tumblin' Tumbleweed.

ANSON. Yes, yes, yes! Now it seems like Podner Stokey from the Skokey country has a word for you hombres. How 'bout it, Harold?

HAROLD. Right, Bill. Friends, whenever a band wants to start something it usually picks on a guitar—and the man doing the picking in this case is Oley Drugan.

ANSON. Oley Drugan—you mean the fellow that plays all those instruments—violin, trumpet, clarinet, and—stuff?

HAROLD. Right again, Bill. As soon as he could walk, Oley played on the guitar—

ANSON. And before that I guess he played on the linoleum, is that the idea? \* \* \* Be that as it may—here comes Oley Drugan on the guitar playing—Musico.

ORCHESTRA. Careless (special arrangement \* \* \* guitar solo \* \* \* no hints).

ANSON. Our thanks to you, Oley, that was a bit of all right. And how are you tunesmiths making out? Are you playing tonight's game with more than one card? You can, you know.

191 Play as many cards as you wish—you'll stand more chances of winning—Musico.

ORCHESTRA. It's a Blue World.

ANSON. And how are you making out? You're going to win one of tonight's big prizes? Swell! You should see those big grocery bags National is giving away this week. Chock full of delicious groceries that every member of your family will enjoy \* \* \* Each one of the one thousand 600 is well worth winning. It's fun to play and win, and so; fill out that line for Musico.

ORCHESTRA. Merry Widow Waltz.

ANSON. What could you do with \$200.00? Can you imagine the thrill that would be yours if when you answered your doorbell, a Postal Telegraph messenger handed you a Postal Telegraph money order for any one of tonight's cash prizes? You'd like to be thrilled like that? Then get busy and fill a row—To win big prizes on Musico.

ORCHESTRA. In the Gloaming (special arrangement—no hints).

ANSON. Comes time again for Harold and the boys to play tonight's original Musico tune. And here's smilin' Harold to tell you something about it.

HAROLD. Friends, radio has accomplished many marvelous things. It has brought top entertainment, news events, and personalities right into your homes. Now, New Musico brings America's world-famous Tin Pan Alley right into your own living room.

192 ANSON. Folks, Tin Pan Alley, where most of our popular songs are written, is considered heaven by all young American composers.

HAROLD. Yes—and the other place by people who live in the neighborhood. But seriously, tonight's new song, written by Griff Williams, will be played over the networks very soon bearing the winning title that one of you will fill in tonight. So—good luck!

ANSON. And that title can be yours, friends. Your title must be in four words and be all about your best girl—that adorable little sweetheart that every man pictures in his romantic mind's eye \* \* \* Sweet, lovely—a man's ideal. It's a new Griff Williams tune, you know: Give it a title on Musico.

ORCHESTRA. Original Tune (Special Arrangement \* \* \* No Hints).

ANSON. Aw—come on—complete your row. Remember—on top of all it is possible to win in the way of prizes, your song title, if selected as the \$200.00 gold award winner, will earn you fifty percent of any and all royalties the song may earn \* \* \* And with Griff Williams as your partner you stand a chance of making hundreds of dollars. Get busy now and fill a row; write in your title—Musico.

ORCHESTRA. Indian Summer.

ANSON. You Musico tunesmiths shouldn't have had any trouble recognizing that one—No sir! Well—Harold seems to have his gas house gang in order—So let's go—Musico.

193 ORCHESTRA. Confucius Say.

ANSON. (Chinese) Wise is Musico fan who play more than one card—Gleater is chance to win cash or big blag gloclies—maybe both—who knows? \* \* \* That's right, all right. Now, friends, when you have checked any line across your Musico card, write in your own original title to fit tonight's original Musico tune and so complete your full line across. Then write your name and address on the back of your card—or cards—and drop them in the Musico prize box in your National Food Store tomorrow, Saturday, April 6, before 6 p. m. Don't phone—just drop your card or cards at your National Food Store tomorrow. In this way, you have a swell chance of winning one of tonight's five big cash prizes \* \* \* The \$200.00 gold award, \$50.00, \$25.00, \$15.00 and \$10.00, or one of the one thousand 600 big grocery bags National is giving away this week—big shopping bags, jammed full of delicious, high quality National merchandise that'll save you many a dollar when you come to do next week's shopping. All winners will be notified by mail before 6 p. m. Thursday, April 11, and Postal Telegraph messengers will deliver Postal Telegraph money orders to the cash winners. So, don't forget—drop your Musico cards in the Musico prize box tomorrow before six—and it won't mean an extra trip for you because you can pick up next week's cards at the same time. Remember the gold award of \$200.00 can be yours—plus the hundreds of dollars you can possibly earn by sharing equally with Maestro Griff Williams in the royalties tonight's Musico song may earn. Next week's Musico

cards will be blue and white and only blue and white Musico  
194 cards can win. So be sure to pick up your blue and white Musico card at your National Food Store tomorrow when you drop this week's card in the Musico prize box. Good Luck! This is Bill Anson, your Master of Musico saying good luck again and good night till next Friday night at this same time.

ORCHESTRA. Old Theme up \* \* \* Quick Seque Into New Theme.

ANDRE. Musico cards are distributed in the vicinities of National Food Stores located in Illinois, Iowa, Michigan, and Indiana. [Short pause.] The fascinating game of Musico is brought to you every Friday at this time by National Tea Company Food Stores. Music is under the direction of Harold Stokes. Play Musico and win. This is Pierre Andre—goodnight all. Musico is a copyrighted feature. [Applause.]

195 In United States District Court, Southern District of  
New York

Civil 52-24

AMERICAN BROADCASTING COMPANY, INC., PLAINTIFF

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS  
COMMISSION, DEFENDANTS

Civil 52-37

NATIONAL BROADCASTING COMPANY, INC., PLAINTIFF

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS  
COMMISSION, DEFENDANTS

Civil 52-38

COLUMBIA BROADCASTING SYSTEM, INC., PLAINTIFF

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS  
COMMISSION, DEFENDANTS

Before CHARLES E. CLARK, Circuit Judge; VINCENT L. LEIBELL,  
District Judge; EDWARD WEINFELD, District Judge

196 G. B. Zorbaugh, Esq., 30 Rockefeller Plaza, New York  
20, N. Y.

Cravath, Swaine & Moore, Esqs., 15 Broad Street, New York 5,  
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Attorneys for National Broadcasting Company, Inc. (Paul W. Williams, Gustav B. Margraf, Thomas E. Ervin, Dudley B. Tenney, Of Counsel); Rosenman, Goldmark, Colin & Kaye, Esqs., 575 Madison Avenue, New York 22, N. Y.

Attorneys for Columbia Broadcasting System, Inc. (Ralph F. Colin, Max Freund, Andrew J. Schoen, Of Counsel).

197 Newell A. Clapp, Acting Assistant Attorney General;  
Myles J. Lane, United States Attorney for the Southern



District of New York; Nathan Skolnik, Assistant United States Attorney; Attorneys for the United States.

James E. Kilday, William J. Hickey, Special Assistants to the Attorney General, Attorneys for the United States.

Benedict P. Cottone, General Counsel; J. Roger Wollenberg, Assistant General Counsel; Daniel R. Ohlbaum, Erich Saxl, Richard T. Conway, Counsel; Attorneys for the Federal Communications Commission.

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*Opinion*

(Filed February 5, 1953)

LEIBELL, D. J. :

These three actions were instituted in August 1949 to enjoin and set aside an order of the Federal Communications Commission adopting certain interpretative rules of the Commission in relation to "give-away" programs on radio and television.<sup>1</sup> Jurisdiction of this three-judge court is based on the provisions of the Federal Communications Act [47 U. S. C. § 402 (a)] and the United States Judiciary and Judicial Procedure Act [T. 28 U. S. C. §§ 1336, 1398 and 2284]. The right to a judicial review of the action of the Federal Communications Commission is also asserted by the plaintiffs under Section 10 of the Administrative Procedure Act [5 U. S. C. § 1009].

The report of the Commission (released August 19, 1949) is entitled "In the Matter of Promulgation of Rules Governing Broadcast of Lottery Information" and states in its opening paragraphs that :

"The Commission has this day determined to adopt the attached interpretative rules, set forth in the appendix to this Report, to be designated as Sections 3.192, 3.292 and 3.692. These rules set forth for the guidance of all broadcast licensees and other interested persons the Commission's interpretation of Section 1304 of the United States Criminal Code (18 U. S. C. 199 1304) prohibiting the broadcast of any lottery, gift enterprise, or similar scheme which the Commission intends to follow in licensing proceedings in determining whether an applicant for a station license or renewal thereof is qualified to operate his station in the public interest. A Notice of Proposed Rule Making concerning this subject was issued by the Commission, on August 5, 1948, and a Supplemental Notice of Proposed Rule Making was issued on August 27, 1948. Interested parties were afforded an opportunity to file briefs or statements setting forth

<sup>1</sup>A similar action was brought in the District Court for the Northern District of Illinois and a temporary restraining order issued on September 13, 1949.

why they believed the rules should or should not be adopted and oral argument on the matter was held before the Commission en banc on October 19, 1948."

The subsequent legal proceedings are summarized in the brief of defendants' counsel, in the American Broadcasting case, as follows:

"The Commission's order provided that it would go into effect on October 1, 1949. On August 31, 1949, plaintiff filed its complaint in this action. On September 19, 1949, Judge Rifkind convened a statutory court consisting of Judge Clark, Judge Leibell and himself, and on September 23, 1949, having heard a motion by plaintiff for a temporary restraining order, Judge Rifkind issued a restraining order and set down the application for an interlocutory injunction for hearing before the three-judge court at a later date. That application, however, did not come on for hearing because, following Judge Rifkind's issuance of a temporary restraining order, the Commission on its own motion postponed the effective date of its proposed rules until 30 days after final decision in this and the co-pending actions.

Following a number of discussions between counsel for the Commission and counsel for plaintiffs in the several actions, it was agreed that the cases could be and should be presented to the Court in a form not requiring a decision on questions of fact. For that purpose, amended complaints were prepared in the several actions and the amended complaint in the present action  
200 was filed on September 22, 1952. On the same day plaintiff moved on the complaint, a supporting affidavit and a stipulation with defendants' counsel, for summary judgment, and defendants filed a cross-motion for an order dismissing the complaint or, in the alternative, for summary judgment."

The stipulation in each action provided that all the allegations of the amended complaint be taken as admitted by the defendants and that either plaintiff or defendants may rely upon facts set forth in the amended complaint in the companion actions and upon any of the affidavits filed in either of said companion actions by either plaintiff or defendants therein.

The three-judge court was thereafter reconstituted by the designation of Judge Weinfeld in place of Judge Rifkind, who had resigned as a District Judge. The motions in the three actions were consolidated for argument and were argued on December 15th, 1952.

#### THE PLEADINGS AND MOTIONS

The amended complaint of the American Broadcasting Company alleges jurisdictional facts and specifies the statutes under which the action is brought; it recites the adoption of the Rules by the Commission, the institution of the action, the parties there-

to, the plaintiff's extensive broadcasting and television business and its large investment in broadcasting facilities for radio and television programs. Paragraphs 11 and 12 of American's amended complaint alleges:

201 "11. Plaintiff has expended substantial sums of money in building up among the public, advertisers and broadcasting stations a valuable reputation and good will for the broadcasting stations it owns and operates and for the programs broadcast by its stations and furnished to affiliated stations for broadcasting by them. From time to time, plaintiff broadcasts programs having as the central feature the conduct of a contest in which prizes are awarded to the successful contestants. Such programs, or some of them, are within the terms of the Rules defining the types of programs which the Commission 'will in any event consider' as violations of Section 1304 of the Criminal Code, although none of such programs constitutes, or has been held by any court to constitute, a lottery, gift enterprise or similar scheme in violation of said Section. Such programs have not tended to demoralize or degrade the listening and viewing public but on the contrary have provided information and entertainment for the public. Many persons listen to, view and enjoy such programs although for one reason or another they are not eligible to win a prize. Such programs are highly popular, have contributed substantially to the reputation of and good will of plaintiff's stations and those affiliated with it and have produced substantial revenues and profits for plaintiff.

"12. Among such programs which are or may be within the terms of the Rules, and which we are informed and believe the Commission considers as coming within the Rules, are the following:

" 'Stop The Music' (radio show).

" 'Stop The Music' (television show)."

The amended complaint further alleges that unless the Commission's Order and the Rules be permanently enjoined and set aside, plaintiff's applications for renewal licenses for its broadcasting stations and for permits or licenses to extend its system will automatically be denied and its investments will be destroyed;

202 or in any event plaintiff will be forced to discontinue the broadcasting of programs which may be within the Commission's Rules and plaintiff will suffer irreparable injury; that the Order and Rules are beyond the jurisdiction and authority of the Commission, violate the provisions of the Administrative Procedure Act, and are illegal and void; that the Rules are in violation of certain provisions of the Constitution of the United States and of the amendments thereto.

The prayer for relief asks that a three-judge court be constituted to hear and determine the action; that plaintiff be granted an interlocutory injunction; and that upon final hearing and determination of this action, the court "enter a decree permanently enjoining, setting aside and annulling said Order of the Commission adopted August 18, 1949, and the Rules adopted thereby."

Annexed to the amended complaint of the American Broadcasting Company is a description of its "Stop The Music" program—the radio version and the television version. The contestants are of two kinds: telephone participants and studio participants. The telephone participants are selected by lot or chance from telephone directories. The telephone participant is not required to be listening at his radio to the broadcast at the time he is called. If the telephone participant fails to identify the melody, a studio participant is given an opportunity to do so. The prizes  
 203 are furnished by the manufacturer, in return for a brief advertisement of his product. Those who are selected from the television audience express in advance, through postcards, their desire to participate. From the cards received a random selection is made and the participants are telephoned.

An affidavit of G. B. Zorbaugh, Secretary and Acting General Attorney for American, is submitted in support of American's motion for a summary judgment. Annexed to it are many exhibits which are also annexed to the affidavits submitted by National or Columbia. They will be hereinafter considered. But one thing should be noted now. The Solicitor of the Post Office Department in a letter of May 9, 1949, advised American that the postcard in relation to the "Stop The Music" program would not be regarded as unmailable matter under the postal lottery statute. He added that whether or not the program conflicted with Section 1304 would be for the Federal Communications Commission to determine.

Further, in May 1949 the Solicitor of the Post Office sent the attorneys for the Columbia Broadcasting System a copy of a general ruling made by the Solicitor for the benefit of all the postmasters, in February 1947, from which the following is quoted:

"In order for a prize scheme to be held in violation of this section, it is necessary to show (in addition to the fact that the prizes are awarded by means of lot or chance) that the 'consideration' involves, for example, the payment of money for the purchase  
 204 of merchandise, chance or admission ticket, or as payment on an account, or requires an expenditure of substantial effort or time. On the other hand, if it is required merely that one's name be registered at a store in order to be eligible for

the prize, consideration is not deemed to be present." (P. O. Bulletin February 13, 1947.)

The amended complaint of the National Broadcasting Company alleges the jurisdictional basis of the action; the order and rules of the Federal Communications Commission; the extent of the National Broadcasting Company's radio and television network; the annual income from the programs of National Broadcasting Company that would be affected by the Commission's Order and Rules; and a description of its four programs thus affected. "You Bet Your Life" is a studio audience participation program; "The \$64 Question" is also a studio program; "What's My Name" is a studio and listening audience program; and "Double or Nothing" is a program in which the primary participation is by members of the studio audience, although members of the listening audience are invited to submit questions on a label of one of the sponsor's products. On the "What's My Name" program there is a selection at random of participants from the listening audience.

The amended complaint alleges the importance of these programs to National Broadcasting Company and the danger to it of a loss of its license when it is up for renewal, if the Commission enforces its rules in relation to Section 1304 of the  
205 United States Criminal Code. There are also allegations that the Commission is without power to promulgate or enforce the rules; that they incorrectly interpret Section 1304; that the rules violate provisions of the Communications Act and the Administrative Procedure Act; and finally that they are unconstitutional under the First, Fifth and Sixth Amendments, and under Clause 3 of Section 9 of Article 1 (Bill of Attainder). The prayer for relief asks that after final hearing, the three-judge court, adjudge and decree that the Commission's Order is beyond the lawful authority of the Commission, in violation of plaintiff's legal rights and wholly void; and that the Commission's Order be vacated and set aside and the enforcement thereof perpetually restrained and enjoined. Annexed to the amended complaint are the scripts of the National Broadcasting Company programs mentioned above.

To the affidavit submitted by Mr. Margraf, Vice President and General Attorney of National Broadcasting Company, on the motion for summary judgment, there are a number of exhibits annexed, among them the following: a copy of Chairman Fly's letter of December 30, 1943, addressed to Senator Wheeler, then Chairman of the Interstate Commerce Committee, asking that he support certain legislation (draft enclosed) directed at radio programs "where members of the radio audience not in the studio are selected by lot or chance to win a prize if they can show that

they were listening to the particular program." The draft  
 206 of the proposed new Section 316 would have prohibited the  
 broadcasting of "any program which offers money, prizes  
 or other gifts to members of the radio audience (as distinguished  
 from the studio audience) selected in whole or in part by lot or  
 chance."

Mr. Margraf's affidavit also annexes copies of letters sent by  
 the Commission's Chairman to the Attorney General's office in  
 February and March 1940, calling his attention to the following  
 programs "alleged to be in violation of Section 316 of the Com-  
 munications Act of 1934." The "Meads Bakery Mystery Woman"  
 program; the "Pot of Gold" program; the "Dixie Treasure Chest"  
 program; the "Sears Grab Bag" program; the "Especially for  
 You" program; the "Musico" program; the "Songo" program.  
 On April 20, 1940, the Attorney General wrote the Commission  
 that after a thorough examination of the material submitted, the  
 Department had concluded that prosecutive action under Section  
 316 should not be instituted in the matter of the "Pot of Gold"  
 and "Meads Bakery" programs. On April 29, 1940, the Attorney  
 General wrote the Commission that after careful consideration  
 no action was warranted by the Department in the "Dixie Treasure  
 Chest" program. On the same day similar letters were sent by  
 the Attorney General to the Commission in respect to the "Sears  
 Grab Bag" program, the "Especially for You" program, the  
 "Songo" program and "Musico."

207 Mr. Margraf's affidavit also annexes documents showing  
 that in 1939 the Solicitor of the Post Office made two con-  
 tradictory rulings with respect to whether a radio program, known  
 as "Musico," was a lottery. On July 1, 1939, he ruled that the  
 program did not violate the Federal lottery laws. On Septem-  
 ber 29, 1939, he ruled that the "Musico" program did violate the  
 Federal lottery laws. When the attorneys for Columbia Broad-  
 casting System inquired in 1949 about those two rulings, the Soli-  
 citor of the Post Office replied on May 3, 1949: "It is likely that if  
 the Musico plan were submitted to this Office today, it would be  
 held, in view of the change reflected in the enclosed notice (a  
 general ruling for all postmasters concerning prize activities dated  
 February 13, 1947) not to conflict with the postal lottery laws."  
 The Solicitor also ruled on March 2, 1950, concerning the radio  
 program "Truth and Consequences" that the contest post cards  
 were mailable, although they were used for a random selection of  
 contestants. The Commission had issued its proposed interpre-  
 tative rules in August 1949.

208 The amended complaint of the Columbia Broadcasting  
 System alleges the statutory provisions under which this  
 action was instituted; the corporate organization of plaintiff; and



the nature and extent of plaintiff's nationwide radio network and television network. It also alleges that "Sing It Again" and "Hit the Jackpot" are two network programs which involve the award of prizes; the revenue those programs produce; how the contestants from the listening audience are selected at random from phone books; and that on the "Hit the Jackpot" program studio contestants were selected by pre-broadcast interviews and non-studio contestants were selected by chance from post cards sent in. It is alleged that because of the Commission's Rules, sponsors have discontinued the programs; that there never has been any court adjudication that these programs violate Section 1304 of the United States Criminal Code; and that there is no finding of fact by the Commission that the said program or programs similar thereto "have had a demoralizing or other deleterious, harmful or evil effect on the public." The amended complaint further alleges that plaintiff's stations have a value of many millions of dollars which will be destroyed if its licenses therefor are not renewed. Finally, it is further alleged that the Commission's Rules do not correctly interpret and apply Section

209 1304 of the United States Criminal Code; that they violate provisions of the United States Constitution and amendments thereto; that they violate other statutes of the United States (the Communications Act and the Administrative Procedure Act); and that plaintiff will suffer irreparable damage unless it is accorded relief in this action. The prayer for relief seeks a permanent injunction and a judgment setting aside the Commission's order of August 18, 1949 and the rules adopted thereby.

Annexed to the amended complaint are transcripts of the program "Sing It Again" and of the program "Hit the Jackpot"; also copies of the Commission's Order, Opinion and Rules.

In support of its motion for summary judgment the Columbia Broadcasting System, Inc., submits an affidavit of Mr. Freund, one of plaintiff's attorneys, to which he annexes copies of the judgment (November 1939) in the case of Clef, Inc., v. Peoria Broadcasting Company in the Circuit Court of Peoria County, Tenth Judicial District, Illinois. That judgment held that the radio program "Musico" was not a lottery and did not violate any statutes of the United States. Mr. Freund also refers to various rulings of the Post Office Department; and to the opinions of the Attorney General in April 1940 in relation to a number of radio programs which were submitted by the Federal Communications Commission to the Department of Justice for action under Section 316 of the Communications Act. All

210 of these programs were listed and discussed in the affidavit submitted by the National Broadcasting Company on its



motion. The Commission's letter to Senator Wheeler dated December 30, 1943, is also referred to.

In each of the three actions the defendants filed no answer but made a counter motion for an order dismissing the amended complaint of the plaintiff or, in the alternative, directing that summary judgment be entered in favor of the defendants. The ground for the motion to dismiss the amended complaint is that "plaintiff fails to state a claim upon which relief can be granted." The ground of the motion for summary judgment is that the amended complaint and its exhibits, the affidavit and other papers show that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law. Defendants' motion in each action was supported by an affidavit of the Commission's general counsel in which he recites the various steps taken preliminary to the adoption of the rules. The affidavit states that "oral argument was held before the Commission en banc" and that "Commissioners Coy, Chairman, Hyde and Jones did not participate in the adoption of the Report and Order of August 19, 1949, and Commissioner Hennock dissented from its adoption." He also states that the United States District Court, in the Northern District of Illinois, and this Court, having  
211 decided to issue restraining orders, "The Commission, on September 21, 1949, issued an order postponing the effective date of said rules until at least thirty days after the ultimate determination of these actions."

The general counsel's affidavit further states:

"4. Plaintiff broadcasts one or more programs which contain features comprehended by one or more of the rules in issue in this case. After such rules become effective, the failure of plaintiff to discontinue the broadcasting of any or all of such programs would result in setting for hearing applications for renewal of licenses filed by plaintiff and, upon a finding that such programs have been or will continue to be carried, such applications would be denied in accordance with the policy set out in the rules in issue."

In defendants' notice of motion in the National Broadcasting Company action, defendants also ask that this court strike paragraphs 13, 14 and 16 of the amended complaint in that action, on the ground that "the programs described in paragraphs 13, 14 and 16 of the amended complaint are not within paragraph (b) of the rules in issue and these paragraphs are therefore immaterial and impertinent." National Broadcasting Company does not oppose defendants' motion to strike the paragraphs and for that reason the motion will be granted.

Section 1304 of Title 18 (the United States Criminal Code) provides:

"§ 1304. BROADCASTING LOTTERY INFORMATION.

"Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"Each day's broadcasting shall constitute a separate offense. June 25, 1948, c. 645, 62 Stat. 763."

Said section 1304 is one of five sections (§§ 1301 to 1305) which constitute "Chapter 61—Lotteries" of Title 18. Section 1301 deals with "Importing or transporting lottery tickets"; Section 1302, with "Mailing lottery tickets or related matter"; Section 1303, with "Postmaster or employee as lottery agent"; Section 1304, with "Broadcasting lottery information"; and Section 1305, with "Fishing contests."<sup>2</sup>

The Federal lottery statute does not define a lottery. The term "lottery" should be given its usual or popular meaning.<sup>3</sup> Since it was part of the Federal Criminal Statute for so

<sup>2</sup> The reviser's notes on these sections in connection with the 1948 Congressional revision of the United States Criminal Code show that Sections 1301, 1302, and 1303 are basically similar in language to corresponding provisions of the 1909 Revision. Section 1304 is practically the same as Section 316 of Title 47 U. S. C. (the Communications Act) which was adopted in June 1934.

The four sections (§§ 1301-1304 incl.) use the same terminology—"any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance." Section 1304 in another respect also uses the same terminology as Section 1302 which prohibits "the mailing of any newspaper, circular, pamphlet or publication of any kind containing any advertisement of any lottery" etc. Section 1302, according to the 1948 Reviser's Note, was derived from R. S. 3894 and various Acts dating back at least to 1876. It may be assumed that when Section 316 of the Federal Communications Act was originally enacted in 1934 as part of the Federal Communications Act, it was modeled on the U. S. Criminal Code provision against mailing lottery tickets and related matter (former § 336, U. S. Criminal Code). In fact a prosecution under the mailing statute (former § 336) was sustained where, as a result of advertising by radio broadcast, the mails were used in furtherance of a lottery. *Horwitz v. United States* (CCA (5) 1933), 63 F. 2d 506.

Section 1305 was not adopted until August 16, 1950. The Congress was prompted to adopt said section because the Postmaster General had ruled that "publications containing advertisement of fishing contests involving the three elements of prizes, consideration and chance" were unavailable under the lottery laws. The contestants were required to pay an entry fee. The Legislative History of Section 1305 (U. S. Code Congressional Service: 81st Congress, Second Session, 1950, Vol. 2, p. 3610) shows that the House of Representatives Committee favored the Bill because it was their "considered judgment that Congress, in enacting the lottery laws, never envisaged their application to such innocent pastimes as the typical fishing contest, which has a solid basis of respectability and wholesomeness far removed from the reprehensible type of gambling activity which it was paramount in the Congressional mind to forbid."

<sup>3</sup> *Old Colony R. Co. v. Commissioner*, 284 U. S. 552, 561; 54 C. J. S. 843 and 962, citing cases.

many years before the Federal Communications Act was adopted in 1934, the term "lottery" should, in interpreting Section 316 of the Federal Communications Act, be given the interpretation which it had received in cases construing former Section 336 of the Federal Criminal Code.<sup>4</sup> *Brown v. Duchesne*, 60 U. S. 183; *Burnet v. Harmel*, 287 U. S. 103; *Van Beeck v. Sabine Towing Co.*, 300 U. S. 342; *N. L. R. B. v. John W. Campbell, Inc.*, 159 F. (2d) 184 (CCA (5) 1947).

#### ADOPTION OF THE COMMISSION'S INTERPRETATIVE RULES

The interpretative rules in relation to Section 1304 of the United States Criminal Code, which the Commission adopted August 19, 1950, read, as follows:

"**LOTTERIES AND GIVE-AWAY PROGRAMS.**—(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting the broadcasting of any advertisement of or information concerning any lottery, gift, enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift, enterprise, or scheme, whether said list contains any part or all of such prizes." (See U. S. C. § 1304.)

"(b) The determination whether a particular program comes within the provisions of subsection (a) depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of subsection (a) if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize:

"(1) such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question; or

"(2) such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

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<sup>4</sup>A "gift enterprise" is one in which the purchaser of an article is given a chance to win a prize. 54 C. J. S. 850. When a gift enterprise involves the essential elements of a lottery (chance, consideration, a prize) it is unlawful. *Matter of Gregory*, 219 U. S. 210.

"(3) such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous program will be considered as an aid in answering the question correctly; or

"(4) such winner or winners are required to answer the phone in a prescribed manner or with a prescribed phrase, or are required to write a letter in a prescribed manner or containing a prescribed phrase, if the prescribed manner of answering the phone or writing the letter or the prescribed phrase to be used over the phone or in the letter (or an aid in ascertaining the prescribed phrase or the prescribed manner of answering the phone or writing the letter) is, or has been, broadcast over the station in question."

[By the words "winner or winners" as used in paragraphs (1), (2), (3) and (4) of subdivision (b), the Commission intended to include "contestants," according to the Commission's counsel.]

Paragraph (a) incorporates the language of Section 1304. Paragraph (b) (1) applies to a "prize enterprise" as well as a lottery.

216 The proposed Rules were considered at a hearing of the full Commission at which these plaintiffs and other interested parties were present, on notice. The hearing afforded the plaintiffs an adequate opportunity to present the grounds of their objections in both oral argument and briefs, and they availed themselves of that opportunity. Exhibit "A," consisting of two bulky volumes submitted by the Government on these motions, shows how widespread and varied were the sources and contents of the responses received by the Commission concerning the proposed rules, and the comments of the various publications in relation thereto.

It was not necessary for the Commission to take testimony before adopting the Rules. The procedure followed by the Commission was appropriate for the matter under consideration. The rule-making power was exercised through a procedure that conformed to the Administrative Procedure Act. [T. 5 U. S. C. § 1003 (b).] The Commission was not adjudicating any controversy which would require a hearing and the application of trial procedure. That might come later, in a specific case, when an application for a renewal license would be under consideration.

## RULE-MAKING POWER OF THE COMMISSION

The Communications Act specifically empowers the Commission to "make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions" [T. 47 U. S. C. § 154 (i)]; and Section 303 (r) grants the Commission the same rule-making power "to carry out the provisions of this chapter." The Commission had the authority to make orders, rules and regulations in relation to broadcasting programs to implement the provisions of Section 1304 of Title 18 U. S. C. (formerly § 316 of the Federal Communications Act), and could proceed by general rule or by individual ad hoc decisions in its discretion. *Securities & Exchange Comm'n v. Chenery Corp.*, 332 U. S. 194. The Commission did not have to await a judicial determination declaring a certain type of program to be in violation of said sections before formulating its Rules. But the Rules could not declare certain types of programs to be lotteries, if as a matter of law they were not lotteries and would not constitute a violation of said sections. The authority to make rules is not the power to make law. *Lincoln Electric Co. v. Commissioner of Int. Rev.*, 190 F. (2d) 326 (CCA (6) 1951).

The rules as adopted, constituted a warning to all existing licensed broadcasting stations that, if their "give-away" programs violated the new rules, that fact would be considered by the Commission when the stations made application for a renewal of their licenses. Under Section 307 of the Communications Act of 1934, as amended, no broadcasting license may be granted for more than three years or for more than five years in the case of other licenses. License renewals are similarly limited. An applicant for a renewal license is entitled to a hearing on his application. [§ 309 (a) of the Act.] The Commission may refuse to renew a license for a violation of any regulation authorized by the Act. [§ 312 (a).] The refusal to renew a license for a violation of the Commission's rules is in effect a sanction to enforce compliance with the rules, but it is a proper exercise of the Commission's power if the station has deliberately violated a rule of the Commission which had been duly promulgated and was within the scope of the Commission's rule-making powers. Section 9 (a) of the Administrative Procedure Act, prohibiting unauthorized sanctions, does not apply. *Regents of the Univer. of Georgia v. Carroll*, 338 U. S. 586. In any specific case the station would have the right to a court review of any order of the Commission declining to renew the station's license. [§ 402 of the Act.] But the enforcement of the Rules, by the refusal of a renewal license, would be a drastic penalty and sanc-

tion. *Columbia Broadcasting System v. United States*, 316 U. S. 407, 418.

Plaintiffs' counsel argue that these rules in relation to "give-away" programs are neither "necessary in the execution of its (the Commission's) functions," nor "necessary to carry out the provisions of this Act (the Federal Communications)." If it is a function of the Commission to determine who are properly

qualified to operate broadcasting and television stations  
219 and to receive licenses or renewal licenses therefor [T. 47

U. S. C. § 303 and § 309], rules stating the required qualifications are necessary to the execution of that function of the Commission; and if under the provisions of the Act the Commission is required to pass upon applications for licenses and license renewals [§ 303 and § 309], rules barring applicants who would broadcast programs which would be in violation of a statute, are necessary to carry out the provisions of the Act. Even though it may not be a function of the Commission to enforce the criminal law, the Commission would have the power to bar any applicant who violated the criminal law. Section 1304 of the United States Criminal Code is so closely identified with the field in which the Commission functions that at one time it was part (§ 316) of the Federal Communications Act. The "public interest, convenience or necessity" standard for the issuance of licenses to broadcasting companies would imply a requirement that the applicant be law-abiding. Although Congress by a specific enactment authorized the Postmaster General to deny the use of the mails to lotteries and gambling schemes [39 U. S. C. § 259 and § 732; *Public Clearing House v. Coyne*, 194 U. S. 497], it was not necessary that Congress specifically authorize the Commission to take action against a broadcasting company which violated Section 1304 of the Criminal Code because the licensing power, specifically conferred on the Commission under Sections 303 and 309 of the Act, would include that authorization.

220 It is also urged by plaintiffs that Section 326 of the Act withholds from the Commission "the power of censorship" and bars the issuance of "any regulation which shall interfere with the right of free speech by means of radio communications" and that therefore the Commission was without the authority to issue these rules as to give-away programs. As will be shown later, the media of free speech are not above the provisions of the criminal law enacted for the protection of the general public; and the press, when using the mails, is barred under Section 1302 of Title 18 United States Code from doing the same things that broadcasting stations are prohibited from doing under Section 1304.



THE COMMISSION'S RULES [(B) (2), (3) AND (4)] WOULD APPLY TO PROGRAMS THAT ARE NOT CRIMES UNDER SECTION 1304 OF TITLE 18

A criminal statute must be strictly construed, even though it may be remedial in its nature and its purposes are to protect the general public. *United States v. Halseth*, 342 U. S. 277; *United States v. McGuire*, 64 F. (2d) 485 [CCA (2) 1933]. Rules of the Commission which are based on a criminal statute should likewise be strictly construed, especially where they are supported by a penalty and sanction more drastic than fines. *Columbia Broadcasting System Inc. v. United States*, 316 U. S. 407. The Rules cannot go beyond the Statute which they seek to implement. If the statute ought to be expanded to include give-away programs, that is solely within the province of Congress. *United States v. Williams*, 341 U. S. 70.

221 The plaintiffs' attorneys argue that the Rules fail to conform to the legal definition of a lottery, and that the Commission has erroneously interpreted Section 1304 of the United States Criminal Code. "The essence of a lottery is a chance for a prize for a price." *Commonwealth v. Wall*, 295 Mass. 70. The specific programs under attack by the government in these three actions offer prizes, and at least some of the contestants for the prizes are selected by lot or chance. In some instances, from the thousands of radio listeners a number of contestants are selected by the spinning of a wheel, which first determines the number of a phone book; next a page thereof; and finally a name and phone number on that page. The telephone number is then called and if the person answering is at the time listening to the program, or is able to give a "password" or an answer previously disclosed on the program, he becomes one of the contestants for the principal prizes. Even if he does not win, he receives a consolation prize on some programs. On television programs, the contestants, in some instances, are selected from the invisible audience at random, from postcards sent in by prospective contestants.

The contestants selected from studio audiences are usually interviewed in advance. Their qualifications are considered by the management before the selection is made. Where the contestants on the program come solely from the studio audience and  
222 they are not selected by chance, it would seem that an essential element of a lottery is lacking. Where some of the contestants are selected by telephone calls in the manner above described, the Commission contends that the element of chance is involved in their selection. I agree with that contention.



THE ACT OF LISTENING TO A BROADCAST OF A "GIVE-AWAY" PROGRAM, OR VIEWING IT ON TELEVISION, DOES NOT CONSTITUTE A "PRICE" OR "VALUABLE CONSIDERATION", WHICH IS AN ESSENTIAL ELEMENT OF A "LOTTERY"

Besides the offer of a prize, and the presence of the element of chance in selecting some of the participants who will contest for the prize, it must also be shown, in order to constitute a lottery, that a price, something of value, is furnished by at least some of the participants. The Commission contends that something of value is furnished by the prospective participants because they become part of an invisible audience, which in the aggregate is a thing of value to the station broadcasting the program and  
223 to the advertiser who sponsors the program. To the station, because it can sell the program and its audience to an advertiser; to the advertiser, because he can use the program as a vehicle for "commercials" pushing the sale of his merchandise.

We may assume that when a manufacturer becomes a sponsor for a radio or television program, the amount he will pay for it will depend upon its popular appeal, the size of the invisible audience it is likely to attract. The features of a program that have a special appeal may be many and varied. It would be a mistake to assume that every one who listens to the program on the radio or views it on television, does so in the hope that he may receive a telephone call to act as a participant and win a prize; but that many may harbor that hope is probably true, otherwise that feature of the program would not be included. If it adds to the value of the program for a sponsor it has a money value to the broadcasting station.

It is not the value of the listening participants to the station or sponsor that is the valuable consideration contemplated by the lottery statute. *Griffiths Amusement Co. v. Morgan (Tex.)*, 98 S. W. 2d 844. It is the value to the participant of what he gives that must be weighed. *People v. Cardas (Cal.)*, 28 P. 2d 99. What do the prospective participants give? The Commission argues that it is a "legal detriment" to the listener or viewer to sit  
224 at home listening to the program and awaiting a telephone call from those in charge of the contest. Technically, and applying the law of contracts, that may be true. But that is not sufficient where a lottery statute, a criminal statute, is involved. The alleged legal detriment to the radio listener is not the kind of a "price" or "thing of value" paid by a participant in a lottery, which the law contemplates as an essential element of a lottery. *Commonwealth v. Wall (Mass.)*, 3 N. E. 2d 28; *State ex rel Stafford v. Fox Great Falls Theatre Corp. (Mont.)*, 132 P. 2d

689. *People v. Burns*, 304 N. Y. 380. There are cases to the contrary (see footnotes on p. 848 of 54 C. J. S.) but this seems the more reasonable view.

Counsel for the government state that of the decided cases, the one that most closely approaches the factual situation of the "give-away" programs is *Maughs v. Porter*, 161 S. E. 242 (Va. 1931). In that case defendant, an auctioneer, in order to attract a large audience, advertised that everyone who attended the auction sale, whether he bid thereat or not, would be given a chance on an automobile. Plaintiff attended the sale, received a number and her number was drawn as the winner of the automobile. The defendant refused to deliver the car to plaintiff. She sued. The defense of lack of consideration for the promise of defendant was resolved in plaintiff's favor, the court holding that attendance at the sale, which plaintiff was not legally obligated to attend, was a legal consideration. But the court went on to say that it was also a  
225 consideration furnished by plaintiff as a participant in a lottery and since a lottery was illegal under the laws of Virginia, the agreement was unenforceable. That case has been criticized in the Law Reviews.<sup>5</sup>

Courts of other states have not followed the *Maughs* case. In *Darlington Theatres v. Coker*, 2 S. E. (2d) 782, the Supreme Court of South Carolina stated that *Maughs v. Porter* was not in accord with "the general current of authority in America." In  
226 *State v. Big Chief Corp.*, 13 A (2d) 236, the Supreme Court of Rhode Island held that *Maughs v. Porter* was against the great weight of authority. In *State v. Fox Kansas Theatre Corp.*, 62 P. (2d) 929, the Supreme Court of Kansas referred to *Maughs v. Porter* as representing an "extreme instance of the feature of consideration." And in *People v. Shafer*, 289 N. Y. S. 649, the court considered *Maughs v. Porter* as not controlling and as having been subject to severe criticism. The *Shafer* case was later affirmed by the New York Court of Appeals, 273 N. Y. 475.

<sup>5</sup> The Virginia Law Review (18 Va. Law Review 465) expressed the view that the general concept of the kind of valuable consideration, as an element of a lottery, was a monetary or a pecuniary consideration. The University of Pennsylvania Law Review (80 U. of Pa. Law Review 744) thought that the Virginia court erred in the *Maughs* case when it held that plaintiff's attendance at the auction was sufficient consideration for the ticket for the drawing of the automobile. In so far as a lottery statute was concerned. The article states: "But it does not follow that a consideration sufficient to support a contract is necessarily the kind of consideration contemplated by the statute prohibiting lotteries." The Harvard Law Review (45 Harvard Law Review 1206), in a note on the type of consideration requisite as an essential element of a lottery, states: "Money, of course, satisfies this requirement. The amount is unimportant; a cent is enough: the money need not even be legal tender. Other property with monetary value serves as consideration, and services would also be adequate. Usually the presence of consideration is obvious." In commenting on the *Maughs* case, a footnote in the article states:—"In any event, the purpose of the lottery laws is to prevent people from giving up money or money's worth in the hope that chance will make their investment profitable, not to forbid them from performing acts having no intrinsic value to anyone. Perhaps the decision can be sustained on the ground that while people did not have to bid at the auction to be eligible to receive the automobile, it was reasonably probable that this would be the case."

A recent case in this Second Circuit (Garden City Chamber of Commerce Inc. et al v. Wagner, 100 F. Supp. 769; 192 F. 2d 240; 104 F. Supp. 235) appears to be very much in point. In that case the defendant, Postmaster of Garden City, refused to allow certain postal cards to be transmitted through the mails on the grounds that they were part of a lottery scheme. The plaintiffs sought an injunction against the Postmaster. In describing the scheme, designated as a treasure hunt, Judge Byers stated that it involved the following steps:

"(a) Each recipient of a card detaches therefrom a removable coupon bearing the same printed number as does the card itself. The sender retains the coupon, and (b) after mailing the card to the Chamber of Commerce, he (c) looks into the shop windows of the storekeepers who participate in the plan. (d) If he sees his number attached to an article displayed in one of those windows, he enters the store, presents his coupon, and receives that article."

227 The Judge then concluded:

"Manifestly this is a joint effort to promote window shopping, which hitherto has not been deemed even faintly illegal or immoral."

Judge Byers further concluded that the Solicitor for the Post Office had "ruled that to be a consideration, which by no common-sense process of reasoning can be so designated," because the Solicitor had mistakenly assumed that the kind of consideration necessary in a lottery case was only what would suffice in an action upon contract.

The Postmaster appealed to the Court of Appeals, Second Circuit, and moved in that court for a stay of Judge Byers' order pending appeal. Judges A. N. Hand, Chase and Clark heard the application. The court held (Judge Clark dissenting) that the Postmaster's motion for a stay should be denied for the reasons stated in Judge Byers' opinion. Judge Clark, in a dissent, viewed the scheme as a lottery. He held in effect that since "the merchants providing the prizes secured the inestimable advertising boon of bringing the potential prize-seeking customers right into their stores, following hard upon diligent examination of the shop window displays to discover the lucky prize numbers"

228 there was sufficient consideration to make this scheme a lottery, and that the treasure hunters participation furnished the requisite consideration.<sup>6</sup>

<sup>6</sup> The Postmaster's appeal from Judge Byers order was later abandoned, and Judge Byers later ruled that his decision on the plaintiff's original application for an injunction had thus become a final determination of the controversy. 104 F. Supp. 235.

If window shopping by the treasure hunters was not such a "consideration" as would make the treasure hunt scheme a lottery, is listening to the radio or watching a television screen, the type of consideration that would make a give-away program a lottery? If not, then subdivisions 2 to 4 inclusive of paragraph (b) of the Commission's rules go beyond the scope of the lottery statute and are an unlawful exercise of the rule-making power.

The danger of "impoverishment" to the participants and the development in them of a "gambling spirit" have been mentioned in some of the earlier cases as the evils of a lottery. The leading case on lotteries, *Horner v. United States*, 147 U. S. 449, quotes from decisions and state laws against lotteries, and cites the "pernicious tendencies" which the State laws were designed to prevent. See, also, *Phalen v. Virginia*, 49 U. S. 163 at p. 168. I fail to see anything akin to those evils imperiling the invisible radio and television audience who listen and view the type of program condemned by subdivisions (2), (3) and (4) of paragraph (b) of the Commission's Rules. Those programs cannot  
 229 be classed as a "reprehensible type of gambling activity which it was paramount in the Congressional mind to forbid." (See Report of the House of Representatives Committee on Section 1305 of the United States Criminal Code, referred to in footnote No. 2 above.)

In the legal opinions given by the United States Attorney General to the Commission in 1940 the type of program now condemned by the Commission's Rules as a lottery, was held not to be covered by Section 316 of the Federal Communications Act (now § 1304 of the Criminal Code). [See Exhibits E, F, G, H, I and J annexed to the American Broadcasting Company's affidavit herein.] The Commission thereupon sought to have the Congress specifically prohibit this type of program and wrote Senator Wheeler on December 30, 1943. [See Exhibit "D" annexed to the American Broadcasting affidavit.]<sup>7</sup> The Interstate Commerce Committee of the Senate (of which Senator Wheeler  
 230 was Chairman) took no action on Chairman Fly's request.

This is not a case where the Court is asked to set its opinion over and above that of the Commission or of a majority of the Commission's membership. There are seven members of the Federal Communications Commission. The rules under attack were

<sup>7</sup> In his letter to Senator Wheeler, Chairman Fly stated: "The problem of money give-away programs is a very troublesome one in broadcasting" \* \* \* "Under the present section 316 of the Communications Act, the Commission has been unable to deal adequately with the problem" \* \* \* "I believe the matter is serious and important enough to warrant action by Congress at this time." The Chairman enclosed a proposed draft of a new Section 316 directed at give-away programs. The Chairman also stated in his letter that: "Under this type of program, listeners are attracted not by the quality of the program but simply by the hope of being awarded a valuable prize simply by listening to a particular program. This is not good broadcasting."

adopted by the action of only four of the members. One of the four dissented. The basis of that dissent was that there was nothing of value given by any of the participants for the chance of winning a prize. If we grant an injunction against the enforcement of Rule (b) (2), (3) and (4) we shall not be holding contra to the view of a majority of the Commission; and our decision will be in accord with opinions, concerning similar "give-away" programs, rendered by the Attorney General in 1940, although the Attorney General now appears in support of the Commission's new rules.

These rules do not involve any of the scientific or technical problems of radio or television, or their statistical field and inter-station relationships, concerning which the Commission has expert knowledge. The Commission's opinion, although entitled to respect, is not authoritative. *Interstate Commerce Com'n v. Service Trucking Co.*, 186 F. (2d) 400; *Lincoln Electric Co. v. Commissioner of Int. Rev.*, 190 F. (2d) 326. We need not consider

231 as applicable the admonition of Judge Frankfurter in *National Broadcasting Co. v. United States*, 319 U. S. 190 at p. 218, that the courts should hesitate to substitute their own views for those of the Commission in matters peculiarly within the knowledge and experience of the Commission. The basic question presented on these motions is the interpretation of the lottery statute (§ 1304) and its application to the types of programs condemned by the Commission's Rules. That is a legal question and peculiarly within the province of the courts.

#### CONSTITUTIONAL QUESTIONS

##### THE FIRST AMENDMENT—FREE SPEECH

Broadcasting and television are entitled to the protection of the First Amendment to the Constitution, guaranteeing freedom of speech and of the press. The amendment has been held to apply to moving pictures, "like newspapers and radio." *United States v. Paramount Pictures*, 334 U. S. 131, 166. But that guarantee does not shield either the individual or the press, or any media for the communication of thought, from the application of criminal laws designed for the protection of the general public. Free speech is not absolute but relative. *Dennis v. United States*, 341 U. S. 494. The Rules of the Commission, in their subject matter (lotteries), did not infringe the right of free speech or free press guaranteed by the First Amendment. In *re Rapier*, 143 U. S. 110; *Horner v. United States*, 143 U. S. 207; *Donaldson v. Reed Magazine*, 333 U. S. 178; *National Broadcasting Co. v.*  
232 *United States*, 319 U. S. 190 at p. 227; *Johnston Broadcasting Co. v. Federal Communications Com'n*, 175 F. (2d) 351.

But in so far as some of their provisions [paragraph (b) (2), (3) and (4)] go beyond the scope of Section 1304 of the Criminal Code, they may be considered as a form of "censorship" and to that extent they would be in violation of the First Amendment.

The merits of the "give-away" programs are not an issue in this case. They appear to be a source of amusement for many thousands of people. Even if it could be said that "we can see nothing of any possible value to society" in these programs, "they are as much entitled to the protection of free speech as the best of literature" or music. *Winters v. New York*, 333 U. S. 507. When the radio or television audiences tire of them, they will make their exit. But the Commission cannot hurry them off by characterizing certain features of the "give-away" programs as lotteries, if as a matter of law they are not.

Plaintiffs assert that the rules, if given effect, would deprive them of their property without due process of law, in contravention of the Fifth Amendment to the Constitution,<sup>8</sup> and 233 would subject them to punishment for a crime without a jury trial, in violation of the Sixth Amendment and Article III, Section 2, Clause 3 of the Constitution; and that the Rules constitute a Bill of Attainder in violation of Article I, Section 9, Clause 3.

In formulating the rules in question the Federal Communications Commission was motivated by the belief that the "give-away" programs involving radio and television audience participation fell within the prohibitions of Title 18 U. S. C. A. Section 1304. The rules, according to the Commission's report, were intended to give effect to the Congressional intent expressed in Section 1304, to prevent the furtherance of lottery schemes through the use of interstate broadcasting media.

Under the provisions of the Federal Communications Act the broadcasting company would be entitled to a trial and would have a right of review in the courts, including the right to an injunction pendente lite. The provisions of the Federal Communications Act and of the Administrative Procedure Act would have to be followed. That would be a compliance with the due process amendment. *Columbia Broadcasting Co. v. United States*, 316 U. S. 407.

234 The power of the Federal Communications Commission to grant or withhold licenses in the public interest and to

<sup>8</sup> "AMENDMENT V—CAPITAL CRIMES: DUE PROCESS.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject to the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, limb, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."



make such rules as will carry out the intendment of the Federal Communications Act, implies a grant of authority to employ the means necessary to discharge the powers conferred. *Stahlman v. Federal Comm. Com'n, C. C. A. (D. C.) 1942, 126 F. (2d) 124*; *Federal Comm. Com'n v. Pottsville Broadcasting Co., 309 U. S. 134*. The means chosen by the Commission to compel compliance with its rules was to deny a license or a renewal license to any applicant whose radio or television activities were found to violate the Commission's Rules. *Communications Commission v. W. O. K. O., 329 U. S. 223*. A finding by the Federal Communications Commission that its rules had been transgressed would not amount to a conviction for a crime (*Mansfield Journal Co. v. Federal Comm. Com'n, C. C. A. (D. C.) 1950, 180 F. 2d 28*) nor would the denial of a license to an applicant be a punishment for a crime. The enforcement of the rules would not violate the Sixth Amendment, or Article III, Section 2, Clause 3, or Article I, Section 9, Clause 3 of the Constitution."

235 The purpose of the Sixth Amendment and of Article III, Section 2, Clause 3, was to assure a defendant, in a criminal prosecution, that he would have a speedy and public trial by an impartial jury in a proper venue with the right of confrontation, the assistance of court process and of counsel. Article I, Section 9, Clause 3, prohibits the passage of any Bill of Attainder, which has been described as a legislative act which inflicts punishment without a judicial trial. *United States v. Lovett, 328 U. S. 303*. Neither of the above amendments nor the specified sections of the Constitution have any application to the facts of these cases.

The parties having stipulated the facts, no findings of fact need be made. The stipulation and defendants' motion concede plaintiffs' allegations of "irreparable injury." Our conclusions of law sufficiently appear in the above opinion and in the relief to be granted in the final judgment.

236

## RELIEF GRANTED

Plaintiffs' motions for summary judgment in their favor are granted to this extent, that the Federal Communications Commission will be permanently restrained and enjoined from en-

## \* AMENDMENT VI—JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## ART. III—SECTION 2, CLAUSE 3. CRIMINAL TRIAL BY JURY.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

## ART. I—SECTION 9, CLAUSE 3. BILL OF ATTAINDER AND EX POST FACTO LAWS.

No Bill of Attainder or ex post facto Law shall be passed.



forcing subdivisions (2), (3) and (4) of paragraph (b) of its interpretative rules adopted August 18, 1949, in relation to radio and television give-away programs; and the Commission's order adopting the rules will, to that extent, be vacated and set aside.

As to paragraphs (a) and (b) (1) of the said rules, plaintiffs' motions for summary judgment and an injunction are denied; and the Commission's order, adopting the rules, is upheld in respect to said paragraphs (a) and (b) (1) of the rules.

Defendants' motions to dismiss the amended complaints are denied. Defendants' motions for summary judgment in defendants' favor are granted only in respect to paragraphs (a) and (b) (1) of said rules. Defendants' motion to strike paragraphs 13, 14 and 16 of the National Broadcasting Company's amended complaint is granted.

237 Let a final judgment be settled accordingly, on ten days' notice.

Dated February 5, 1953.

VINCENT L. LEIBELL,  
*United States District Judge.*  
EDWARD WEINFELD,  
*United States District Judge.*

238 Before CLARK, Circuit Judge, and LEIBELL and WEINFELD, District Judges.

*Clark, Circuit Judge (dissenting)*

Judge LEIDELL's masterly analysis of the case shows that the only point of doubt or concern is as to whether "consider-  
239 -ation" is given in return for a chance at substantial and valuable prizes or financial awards. Though earnestly argued by the several plaintiffs, the other contentions—some rising to the constitutional level—are unconvincing and I agree with the court in overruling them. But on the one issue which thus proves controlling, I do not feel that my brothers have reached a result which is consistent with law, or, indeed, with reason, and I accordingly dissent.

Before I turn to this, I shall briefly dispose of some underbrush. It seems to me that not only was the Federal Communications Commission justified in tackling this thorny subject, but, indeed, it was its duty to do so and it is to be commended for its efforts at length to have the matter definitely determined. Like the enforcement of all sumptuary or moralistic legislation, there is a natural desire to pass the buck to others; and this may be accentuated where a showing of criminality would be required for the pressing of an indictment. But when the Congress says that "Whoever

broadcasts by means of any radio station for which a license is required by any law of the United States" shall not do certain things under pain of fine and imprisonment, 18 U. S. C. § 1304, the licensing authority must surely take some heed of the mandate and act accordingly if it is not to wink at or impliedly approve the law's violations. So it does seem to me that past actions or refusals to act of other governmental agencies or officers have little bearing on our problem. Suffice it to say that now the Commission and the Department of Justice are loyally and co-operatively engaged in advancing what they—and I—think to be a correct interpretation of law. Against this there obviously can be no estoppel to operate against either the United States of America or any one of its agencies.

Now I turn to the specific issue. It is well to recall the 240 statute, now a part of the Criminal Code, 18 U. S. C. § 1304, formerly a part of the Federal Communications Act, 47 U. S. C. § 316, adopted in June, 1934. Its prohibition is against "the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme." I emphasize two matters: (1) Within the prohibition are not merely lotteries, but gift enterprises and any "similar scheme" offering prizes dependent upon "chance"; (2) the statute does not mention "consideration." I stress the first because there does seem to be a feeling in the case that it concerns "buying" a ticket to the drawing of some grand prize in the good old-fashioned sweepstakes manner. But the statute is much broader, as broad in fact as it could possibly be made for the objectives in view. It is more inclusive, for example, than such a statute as N. Y. Penal Law § 1370 reaching "the distribution of property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance." So it is not without significance that when Congress in 1950 wished to validate "any fishing contest not conducted for profit wherein prizes are awarded for the specie, size, weight, or quality of fish caught by contestants in any bona fide fishing or recreational event," it felt it had to do this by specific exemption. 18 U. S. C. § 1305. And the omission of any reference to consideration—unlike the New York statute, for example—carries its own meaning. The federal law contains no technical requirement of consideration as such; whatever is read into the statute must be what will carry out its essential purpose.

Now the essential purpose cannot be oversimplified to debauchery by a single grand lottery, or even several lotteries, as

241 the initial and leading case of *Horner v. United States*,  
 147 U. S. 449, is at pains to point out. Rather it is aimed  
 at a somewhat less direct road to waste and want: the lack of in-  
 dustry and initiative induced by initial success in getting valuable  
 returns from the operation of chance. There is also quite specifi-  
 cally the unjust enrichment which accrues to the manipulators of  
 the scheme. But it is still possible for anyone—advertiser, broad-  
 caster, or what not—to make pure gifts; the Commission calls  
 attention to the plot of a moving picture of twenty years ago, “If  
 I Had A Million,” and says that if “a rich man gives away his  
 millions to persons chosen at random, it may be conceded that no  
 evil would be done and no violation of the law would be involved.”  
 So what we are looking for is really some gain to the promoters of  
 the scheme which takes the matter out of the realm of pure  
 altruism.

This, of course, greatly simplifies the problem. But I believe  
 it makes sense of it, too. To inquire whether the broadcasters and  
 their advertising customers are engaged in altruistic operations is  
 of course to supply the answer at once. What they are doing is to  
 purchase time to advertise and vend their wares—indeed the most  
 valuable time conceivable, as is alleged in the papers before us and  
 conceded by all.<sup>10</sup> The time spent by a single listener may be quite  
 brief. But the time spent by the whole country in hanging for an  
 hour more or less breathlessly upon a nationwide broadcast which  
 may (but probably will not) yield the listeners returns ranging  
 from refrigerators, pianos, and trips to South America to good  
 242 hard cash beyond their wildest dreams provides so stupen-  
 dous an audience for the advertising message as hardly to be  
 estimated. And I suspect that the time spent by any single  
 listener is almost always considerable. A few fleeting moments  
 will not be adequate to learn what the rules are, hear and guess  
 the tune or the answer to the question, and accept and answer the  
 fateful telephonic inquiry. One is just impelled to hear the hour  
 out, and, having gotten the hang of it, to come back the following  
 week, and have the family listen as a part of the game until the  
 announcer calls.

My brothers, it seems to me, are drawn away from the natural  
 answer by the odd mistake that what is involved as the “price” or  
 “valuable consideration” (terms themselves constituting an over-  
 precise formulation of the issue, as I have pointed out) is not value  
 “to the station or sponsor,” but “It is the value to the participant

<sup>10</sup> Indeed, audiences are already becoming hardened to what were once considered fabulously high give-away bonanzas. See the following item in the N. Y. Times, Dec. 28, 1932, Sunday Radio Section, p. X 11: “Hard Times. A doorman from A. B. C.’s Ritz Theater stood at the corner of Broadway and Forty-eighth Street one morning last week with a handful of tickets. ‘Get your free tickets to “Break the Bank,”’ he yelled, ‘the biggest money-paying show on the air. Offering \$2,900.’ In ten minutes he unloaded just two tickets.”

of what he gives that must be weighed." Of course, the participant must yield something; if he is quite supine, there would be a gift. But surely the application made by my brothers quite inverts the requirement and makes it meaningless and irrational. It is what the operator receives—in terms of value to himself—which must necessarily mark the difference between a gift and a chance, between altruism and business. The opinion appears to hold that while receiving the benefit of something as valuable as this radio time does not cast doubt upon the sponsor's altruism, yet the participant's expenditure of any pecuniary amount—even "a cent," see note 5 of the opinion—makes the scheme at once  
243 illegal.<sup>11</sup> And the amount given need not even go to the operator. Such a view not only makes evasion easy and enforcement in natural course difficult, if not impossible; it also—and I say this with deference—makes the whole approach irrational. To say that here we have pure donation, whereas we would have a lottery if the participant were required to deposit a penny in a collection plate, or even a dime in a March-of-Dimes kettle, just does not make sense. The applicable test is not any strict doctrine of yielding a symbolic peppercorn to formalize a contract or a conveyance. It is a practical one, perceptive of the fact that the yield to the operator is surely all important. And this is recognized in the well reasoned cases, such as *State v. Wilson*, 109 Vt. 349, 196 A. 757, cited below.

If the issue can thus be made comparatively simple, why has so considerable an amount of concern, if not confusion, developed in the cases? A part of this is undoubtedly occasioned by differences in the governing law; thus cases under the New York statute cited above would hardly be safe authorities under the federal law. But the main reason, I believe, lies elsewhere and, in fact, is not hard to discern. It seems to be found in all cases of attempts to enforce moral precepts which to a large part of the community seem strange and excessively puritanical. The analogy of the Prohibition Amendment is close. Since the law seems harsh, a search most diligent is made to cut down its more drastic operation; in fact, the mind seems to revolt at enforcement of its harsher elements. That, I think, is the real meaning. If people want to waste their time in listening to radio programs in the hope or off-chance of winning some valuable prizes, why not let

<sup>11</sup> The statement "a cent is enough" quoted in the opinion from 45 Harv. L. Rev. 1196, 1206, appears to be borne out by the cases cited: *People v. Runge*, 3 N. Y. Cr. R. 85, 34 Hun 634; *Glover v. Malloska*, 238 Mich. 216, 213 N. W. 107, holding also that not all the participants need pay even the one cent which is currently the consideration; and *Stewart v. State*, 108 Tex. Cr. R. 661, 2 S. W. 2d 440, holding also that the coin need not be current money of recognized value. So, too, services, such as selling a book, are sufficient. *Loveland v. Bode*, 214 Ill. App. 399.

244 them do it. That is a widespread attitude, with which, of course, I have considerable sympathy. But I think we should draw the line when it goes so far as to make a joke of an existing law, to turn an understandable, if unlikely, prohibition into one which is unintelligible. After all, the fate of the Prohibition Amendment showed the proper eventual remedy.

My brothers do not collect cases, nor shall I. It is a barren task in this problem. For courts and writers have found or created confusion and doubt, and it does little good to catalogue this. Moreover, as stated, many precedents concern differing legal situations. I shall content myself with a few authorities I consider most opposite. First I cite *Maughs v. Porter*, 157 Va. 415, 161 S. E. 242, the case of a lottery found in attendance at a real estate auction sale where an automobile was to be given away to a person present, not only because it is a leading case, but also because of the friends and enemies it has made. Thus it has been approved in the persuasive case, cited earlier, of *State v. Wilson*, 109 Vt. 349, 196 A. 757, holding a theater "bank night" scheme a lottery. Attempts to answer the court's analysis have produced fresh difficulties, forcing one commentator to the extreme, found indeed in several of the opposing cases, of requiring a monetary or a pecuniary consideration, 18 Va. L. Rev. 465, while another, trying to avoid going so far, says that the consideration while present was not "of economic value"—a masterpiece of unreality, particularly as applied here. 80 U. of Pa. L. Rev. 744. Another writer quoted for the "a cent" proposition of note 5 of the opinion concludes some tendentiously critical remarks with this bromidic statement: "Perhaps the decision can be sustained on the ground that while people did not have to bid at the auction to be eligible to receive the automobile, it was reasonably probable that this would be the case." (!) *Pickett, Contests and the Lottery Laws*, 45

Harv. L. Rev. 1196, 1206 n. 37. The requirement of a pecuniary consideration may perhaps be justified under some statutes. Surely, however, that is nowhere a requisite of the federal Act. Further explanation of the requirement of consideration to distinguish a way a gift is found in such cases as *Affiliated Enterprises v. Waller*, 1 Terry 28, 40 Del. 28, 5 A. 2d 257; *Furst v. A. & G. Amusement Co.*, 128 N. J. L. 311, 25 A. 2d 892; *Glover v. Malloska*, 238 Mich. 216, 213 N. W. 107; *State v. Jones*, 44 N. M. 623, 107 P. 2d 324; *Affiliated Enterprises v. Gantz*, 10 Cir., 86 F. 2d 597; *Central State Theatre Corp. v. Patz*, D. C. S. D. Iowa, 11 F. Supp. 566; *State of Kansas ex rel. Beck v. Fox Kansas Theatre Co*, 144 Kan. 687, 62 P. 2d 929, 109 A. L. R. 698, with annotation at 709; *State of Missouri ex rel. McKittrick v. Globe-Democrat Pub. Co.*, 341 Mo. 862, 110 S. W. 2d 705, 113 A. L. R. 1104, with annotation at 1121.

And not without some immediate point are the many decisions upholding F. T. C. orders against the use of lottery devices, such as punch boards, in the distribution of candy. Consolidated Mfg. Co. v. F. T. C., 4 Cir., 199 F. 2d 417, citing cases; Sweets Co. of America v. F. T. C., 2 Cir., 109 F. 2d 296.

The reasoning and the cases cited seem to me rather compelling to sustain the Commission's ruling. Were I more in doubt, I should feel some compunction to uphold the defendants' position out of some deference to the respect due the decisions made by the agencies of government having the prime responsibility. But I do not think resort to that principle necessary. Nor do I find what I should regard as apt authority to the contrary. Perhaps I should make reference to *Garden City Chamber of Commerce v. Wagner*, D. C. E. D. N. Y., 100 F. Supp. 769, 772, for that involved a similar statute, 18 U. S. C. § 1302, covering the use of the mails for lottery. In that case the court said that "the consideration requisite to a lottery is a contribution in kind to the fund or property to be distributed." This principle I think cannot be upheld and I understand the plaintiffs herein do not support it. And so further reflection has strengthened my belief in the validity of the position I took in dissent when the case came before us on application for a stay pending appeal, 2 Cir., 192 F. 2d 240. Our consideration was not on the merits, but as the result of a brief hearing on our motion calendar. A motion for a stay of this ingenious scheme of local and neighborhood merchants for Christmas sales was obviously not very appealing; further, it required summary disposition in view of the pressure of time—it was submitted November 13 and decision was filed November 16, 1951; and denial of the stay, carrying the matter beyond the Christmas season, made the question moot for all practical purposes. The case cannot therefore be regarded as a definitive precedent disposing of the issue.

I think it therefore appropriate to reiterate by way of summary that my colleagues suggest no workable dividing line between what is "value" and what is not in deciding what the participants in these give-away schemes have themselves given. On the contrary, they seem to me to have rejected the understandable tests to which persuasive precedents point. I fear, therefore, that our decision will serve to promote more confusion than it allays. For my part I would dismiss the plaintiffs' complaints on the merits.



250 In United States District Court, Southern District  
of New York

Civil Action No. 52-24

AMERICAN BROADCASTING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS  
COMMISSION, DEFENDANTS

*Final Judgment*

Filed March 11, 1953

This cause having come on further to be heard on plaintiff's motion for summary judgment and on defendants' motion for an order dismissing the amended complaint or, in the alternative, for summary judgment, and the Court having heard the arguments of counsel, and upon consideration thereof, and the Court having rendered and filed an opinion on February 5, 1953 (one of the judges dissenting with opinion), stating that it was unnecessary to make findings of fact, the facts having been stipulated by the parties for the purposes of this action, and setting forth its conclusions of law and the relief to be granted, it is

Ordered, adjudged and decreed that

(1) plaintiff's motion for summary judgment is granted to the extent that defendants are permanently restrained and enjoined from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of defendant Federal Communications Commission's Rules<sup>2</sup> adopted August 18, 1949, and

251 (2) the Order of said defendant Federal Communications Commission dated August 18, 1949, to the extent that it adopted subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of said Rules is vacated and set aside;

(3) plaintiff's motion for summary judgment and for an injunction is denied with respect to paragraph (a) and paragraph (b) (1) of said Sections 3.192, 3.292 and 3.656 of said Rules, and

(4) the said Order of said defendant Federal Communications Commission adopting the Rules is sustained with respect to said paragraph (a) and paragraph (b) (1);

(5) defendants' motion to dismiss the amended complaint is denied; and

<sup>2</sup> See Appendix annexed hereto.



(6) defendants' motion for summary judgment is granted only with respect to paragraph (a) and paragraph (b) (1) of Sections 3.192, 3.292 and 3.656 of said Rules and is in all other respects denied.

At New York, New York, in said District, on March 10, 1953.

EDWARD WEINFELD,

*United States District Judge.*

VINCENT L. LEIBELL,

*United States District Judge.*

CHARLES E. CLARK,

*United States Circuit Judge.*

Judgment entered Mar. 11, 1953.

WILLIAM V. CONNELL,

*Clerk.*

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# APPENDIX

The following is the text of §§ 3.192, 3.292 and 3.656.<sup>13</sup>

LOTTERIES AND GIVE-AWAY PROGRAMS.—(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting "the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes." (See U. S. C. sec. 1304.)

(b) The determination whether a particular program comes within the provisions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize:

(1) Such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question; or

<sup>13</sup> By its Sixth Report and Order adopted on April 11, 1952, in Dockets No. 8736 et al., the Commission renumbered Section 3.692 as Section 3.656.

(2) Such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

(3) Such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous program will be considered as an aid in answering the question correctly; or

(4) Such winner or winners are required to answer the phone in a prescribed manner or with a prescribed phrase, or are required to write a letter in a prescribed manner or containing a prescribed phrase, if the prescribed manner of answering the phone or  
 253 writing the letter or the prescribed phrase to be used over the phone or in the letter (or an aid in ascertaining the prescribed phrase or the prescribed manner of answering the phone or writing the letter) is, or has been, broadcast over the station in question.

259 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Civil Action No. 52-24

*Order allowing appeal*

(Filed May 8, 1953)

The Federal Communications Commission, defendant herein, having made and filed its petition praying for an appeal to the Supreme Court of the United States from the order of this Court in this cause entered on March 11, 1953, in so far as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the amended complaint herein or, in the alternative, for summary judgment in defendants' favor, and permanently restrained the Federal Communications Commission from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.191, 3.291 and 3.656 of its Rules and Regulations adopted August 18, 1949, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now therefore, it is hereby ordered that said appeal be and the same hereby is allowed as prayed for and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court.

It is further ordered that citation shall issue in accordance with law.

CHARLES E. CLARK,  
*Judge of the United States Court of Appeals  
for the Second Circuit.*

VINCENT L. LEIBELL,  
*Judge of the United States District Court.*

EDWARD WEINFELD,  
*Judge of the United States District Court.*

H. A. C.

Dated May 8th, 1953.

262 In United States District Court

[Title omitted.]

Civil Action No. 52-24

*Assignment of errors and prayer for reversal*

(Filed May 8, 1953)

The Federal Communications Commission, defendant in the above-entitled clause, in connection with its appeal to the Supreme Court of the United States, does hereby file the following assignment of errors upon which it will rely in its prosecution of said appeal from the order of the statutory three-judge United States District Court for the Southern District of New York, entered on the 11th day of March, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the complaint or, in the alternative, for summary judgment in defendants' favor, and permanently restrained the Federal Communications Commission from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of its Rules and Regulations adopted August 18, 1949.

Said Court erred:

1. In holding that subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of the Rules and Regulations of the Federal Communications Commission adopted in its Report and Order of August 18, 1949 go beyond, and constitute an incorrect interpretation of, Section 1304, Title 18, United States Code and are unlawful exercise of the rule making power.

263 2. In granting plaintiff's motion for summary judgment in part by permanently enjoining the Federal Communications Commission from enforcing said subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of the Commission's Rules and Regulations and, to that extent, vacating and setting aside the Commission's order adopting said Rules.

3. In denying defendants' motion to dismiss the amended complaint or, in the alternative, for summary judgment in favor of defendants, to the extent that the Court did so in denying the motion to dismiss the amended complaint and in granting defendants' motion for summary judgment in defendants' favor only in respect to paragraphs (a) and (b) (1) of Sections 3.192, 3.292 and 3.656 of the Commission's Rules and Regulations.

Wherefore, defendant, Federal Communications Commission, prays that the order entered herein on the 11th day of March, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the amended complaint herein or, in the alternative, for summary judgment in defendants' favor, and permanently restrained the Federal Communications Commission from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of its Rules and Regulations adopted August 18, 1949, be reversed, and that such other and further relief be granted as to the Court may seem just and proper.

Dated: May 8, 1953.

Benedict P. Cottone,  
BENEDICT P. COTTONE,  
*General Counsel,*

J. Roger Wollenberg,  
J. ROGER WOLLENBERG,  
*Assistant General Counsel,*  
Daniel R. Ohlbaum,  
DANIEL R. OHLBAUM,  
*Counsel,*

*Attorneys for Federal Communications Commission.*

266 In United States District Court

Civil Action No. 52-24

[Title omitted.]

[File endorsement omitted.]

*Order permitting transmission of original documents*

(Filed May 25, 1953)

In accordance with the provisions of the praecipe herein, and pursuant to the motion to transmit certain original documents

on the appeal of the above-entitled cause to the Supreme Court of the United States, and upon the annexed consent by the attorneys for the plaintiff, it is

Ordered, that the original of all documents, transcripts, exhibits or other parts of this Court records in the above-entitled cause, of which there are no copies on file, may all be forwarded in lieu of copies of such documents to the Clerk of the Supreme Court of the United States as part of the transcript of the record on the appeal herein.

CHARLES E. CLARK,  
*Judge of the United States Court  
of Appeals for the Second Circuit.*

VINCENT L. LEIBELL,  
*Judge of the United  
States District Court.*

EDWARD WEINFELD,  
*Judge of the United  
States District Court.*

Dated: May 21st, 1953.

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In United States District Court

Civil Action No. 52-24

[Title omitted.]

[File endorsement omitted.]

*Praeipce*

(Filed May 8, 1953)

*To the Clerk of the United States District Court for the Southern  
District of New York:*

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court, and include in said transcript the following:

1. Complaint and exhibits thereto, filed by American Broadcasting Company, Inc., filed on August 31, 1949.
2. Affidavit of James M. Cecil, sworn to September 13, 1949.
3. Affidavit of Ray Vir Den. sworn to September 13, 1949.
4. Affidavit of Joseph A. McDonald, sworn to September 15, 1949, and exhibits thereto.
5. Affidavit of Mark Woods, sworn to September 15, 1949.
6. Order to show cause signed by Judge Simon H. Rifkind, dated September 15, 1949.
7. Temporary restraining order, entered September 23, 1949.

8. Notice of Clerk of Court advising that motion for interlocutory injunction was designated for hearing on October 27, 1949, dated October 17, 1949.

9. Stipulation postponing hearing on motion for interlocutory injunction, dated October 17, 1949, and filed October 24, 1949.

10. Answer of the United States of America and the Federal Communications Commission, and affidavit of service.

11. Stipulation for filing of amended complaint, together with amended complaint and exhibits thereto, filed September 22, 1952.

274 12. Letter to Judge Vincent L. Leibell from Alfred McCormack, dated October 14, 1952.

13. Affidavit of G. B. Zorbaugh, sworn to September 19, 1952, and exhibits thereto.

14. Notice of Motion for summary judgment on behalf of American Broadcasting Company, Inc., dated September 22, 1952.

15. Notice of Motion and motion to dismiss complaint, or for summary judgment in favor of United States of America and Federal Communications Commission, together with supporting affidavit of Benedict P. Cottone and exhibits thereto, filed September 22, 1952.

16. Order convening three-judge court, entered October 30, 1952.

17. Briefs submitted to the District Court on behalf of American Broadcasting Company, Inc., and defendants United States of America and Federal Communications Commission.

18. Letter dated December 16, 1952, from George B. Turner to Judge Charles E. Clark, and enclosure.

19. Opinions of District Court, dated February 5, 1953.

20. Final Judgment of District Court, entered March 11, 1953.

21. Petition for appeal.

22. Assignment of errors and prayer for reversal.

23. Statement as to jurisdiction.

24. Order allowing appeal.

25. Statement required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States.

26. Order permitting transmission of original documents.

27. Citation on appeal.

28. Admission of service of papers on appeal.

29. The praecipe with acknowledgement of service and waiver.

30. Clerk's certificate.

Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court of

275 the United States, and is to be filed in the Office of the Clerk of the Supreme Court.

Dated: May 8, 1953.

Benedict P. Cottone,  
BENEDICT P. COTTONE,  
*General Counsel,*

J. Roger Wollenberg,  
J. ROGER WOLLENBERG,  
*Assistant General Counsel,*

Daniel R. Ohlbaum,  
DANIEL R. OHLBAUM,  
*Counsel,*

*Attorneys for the Federal Communications Commission.*

278 In United States District Court

Civil Action No. 52-37

[File endorsement omitted.]

NATIONAL BROADCASTING COMPANY, INC., PLAINTIFF

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS  
COMMISSION, DEFENDANTS

*Stipulation for filing amended complaint*

(Filed September 17, 1952)

It is hereby stipulated and agreed by and between the parties hereto by their respective counsel as follows:

1. Defendants consent to the filing by plaintiff of an amended complaint in substantially the form annexed hereto (without exhibits) and marked "Exhibit A," such amended complaint as filed to have annexed thereto the exhibits recited therein. Such amended complaint together with the exhibits thereto is herein-after referred to as the Amended Complaint.

2. It appearing that each of the parties intends to make a motion for summary judgment in this action, for the purpose of such motions

(a) all allegations of fact set forth in the Amended Complaint shall be taken as admitted by the defendants, and

(b) either plaintiff or defendants may rely on allegations of fact contained in the complaints or amended complaints in the companion actions now pending in this Court entitled, respec-



tively, American Broadcasting Company, Inc., plaintiff, against United States of America and The Federal Communications Commission, defendants, Civil Action No. 52-24, and 279 Columbia Broadcasting System, Inc., plaintiff, vs. United States of America and The Federal Communications Commission, defendants, Civil Action No. 52-58, and on the stipulations and affidavits, or any of them, filed in either of said companion actions, in each case to the same extent as if such complaints, stipulations and affidavits had been filed in this action.

Dated: New York, N. Y., Sept. 16, 1952.

CAHILL, GORDON, ZACHRY & REINDEL,  
*Attorneys for Plaintiff.*

WILLIAM J. HICKEY,  
*Attorneys for Defendant,  
United States of America.*

MYLES J. LANE,  
*United States Attorney for the  
Southern District of New York.*

DANIEL R. OHLBAUM,  
*Attorney for Defendant,  
Federal Communications Commission.*

So ordered: Sept. 16, 1952.

SYLVESTER J. RYAN,  
*U. S. D. J.*  
*H. A. C.*

280 In United States District Court  
Civil Action No. 52-37

[Title omitted.]

[File endorsement omitted.]

*Amended complaint*

(Filed September 22, 1952)

Plaintiff for its amended complaint herein alleges:

1. This action is brought pursuant to the provisions of the Communications Act of 1934, as amended (48 Stat. 1064, 1093 and 63 Stat. 108; 47 U. S. C. § 402 (a)) and of Title 28, United States Code (28 U. S. C. §§ 1336, 1398, 2484, 2321-25), and Section 10 of the Administrative Procedure Act (60 Stat. 243; 5 U. S. C. § 1009), to set aside, annul, suspend and permanently enjoin the enforcement of an order of the Federal Communications Commission issued August 18, 1949, in proceedings entitled "In the Matter of Promulgation of Rules Governing Broadcast of Lottery Infor-

mation, Federal Communications Commission, Docket No. 9113" (said order together with the accompanying report being hereinafter sometimes together called the "Order").

2. The Order adopts and promulgates rules designated therein as §§ 3.192, 3.292 and 3.692 (hereinafter sometimes called the "Rules"). The effective date specified in the Order is October 1, 1949. The enforcement of the Rules and the Order has  
281 been stayed by an order of this Court, entered by Judge

Simon H. Rifkind, on September 23, 1949, pending determination of an application by plaintiff for an interlocutory injunction. On September 21, 1949, the Federal Communications Commission adopted and issued an additional order postponing the effective date of the Rules and Order here involved until at least 30 days after a final decision by the Supreme Court of the United States in this and other pending litigation with respect to such Rules and Order, or 30 days after the time within which an appeal to the Supreme Court may be taken in such litigation has expired without such an appeal being taken.

3. National Broadcasting Company, Inc. (hereinafter called "NBC"), is a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in the City of New York, State of New York, and in the Southern District thereof.

4. The Federal Communications Commission (hereinafter called the "Commission") is an administrative tribunal created by the Communications Act of 1934, as amended (48 Stat. 1064; 47 U. S. C. § 151 et seq.), (hereinafter called the "Communications Act"), and is charged with the execution and enforcement of the provisions of the Communications Act.

5. The United States of America is made a defendant in this suit pursuant to the provisions of the Act of June 25, 1948 (62 Stat. 969; 28 U. S. C. § 2322), and said Communications Act of 1934 (48 Stat. 1064, 1093 and 63 Stat. 108; 47 U. S. C. § 402 (a)).

6. NBC is engaged in sound and television broadcasting and in  
282 sound and television network broadcasting in interstate and foreign commerce and is subject to the provisions of the Communications Act. NBC owns and, pursuant to licenses granted by the Commission, operates 5 amplitude modulation or standard broadcast stations, 5 frequency modulation broadcast stations and 5 television broadcast stations. In addition, it furnishes network programs to approximately 187 amplitude modulation broadcast stations and 59 television broadcast stations in the United States, such stations being commonly known as affiliated stations.

7. The Commission, on August 5, 1948, released a Notice of Proposed Rule-Making, in proceedings entitled "In the Matter of

Promulgation of Rules Governing Broadcast of Lottery Information," Docket No. 9113 (13 Fed. Reg. 4748), in which it announced its intention to adopt certain rules. On August 27, 1948, the Commission released a Supplemental Notice of Proposed Rule-Making (13 Fed. Reg. 5075), modifying the statutory basis alleged for its jurisdiction. Copies of said notices are attached hereto, marked "Exhibits A-1 and A-2," respectively, and are made a part hereof.

8. Pursuant to said notices, NBC and others submitted statements and briefs and participated in oral argument before the Commission on October 19, 1948. The Commission did not present any arguments or adduce any evidence at the oral argument in support of its proposed rules.

9. On August 18, 1949, the Commission, acting by four (one dissenting) of its seven members, issued a Report and Order (hereinafter called the "Order") adopting, effective October 1, 1949, the rules set out therein. A copy of said Order is attached hereto, marked "Exhibit B," and made a part hereof.

10. By the terms and provisions of the Order, the Commission promulgated the following rules:

283 "LOTTERIES AND GIVE-AWAY PROGRAMS.—(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting 'the broadcasting of any advertisement of or information concerning any lottery, gift, enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.' (See U. S. C. § 1304.)

"(b) The determination whether a particular program comes within the provisions of subsection (a) depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of subsection (a) if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize:

"(1) such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question; or

"(2) such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

"(3) such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous program will be considered as an aid in answering the question correctly; or

"(4) such winner or winners are required to answer the phone in a prescribed manner or with a prescribed phrase, or are required to write a letter in a prescribed manner, or containing a prescribed phrase, if the prescribed manner of answering the phone or writing the letter or the prescribed phrase to be used over the phone or in the letter (or an aid in ascertaining the prescribed phrase or the prescribed manner of answering the phone or writing the letter) is, or has been, broadcast over the station in question."

284 11. The Order applies to NBC in the conduct of its network business as well as in its business as licensee and operator of broadcast stations. NBC now broadcasts, and has scheduled for broadcast in the future, programs which either clearly fall within the terms of the Order or may fall within the terms of the Order if the Order is broadly construed. Such programs are broadcast by NBC over the stations owned and operated by it and over the NBC sound broadcasting and NBC television networks. Certain of these programs have audiences of many millions, and have achieved such a large measure of public approval and popularity as to be of great value to NBC. Time charges on an annual basis for the three programs described in paragraphs 13, 15 and 16 hereof alone are currently in excess of \$5,000,000.

12. Certain typical programs among those currently being broadcast or formerly broadcast by NBC which it is believed may be considered by the Commission to fall within the terms of the Order are described in paragraphs 13 to 16 hereof. The description of each such program is based upon a recent format and status of such program. Since program formats vary from time to time it is possible that individual broadcasts of such programs may fall within the terms of the Order and other broadcasts may not.

13. "You Bet Your Life" is a studio audience participation program. There is no admission fee to the broadcast. Every Wednesday from 9-9:30 p. m. (New York time) a radio version is broadcast over 177 stations of the NBC sound network, and 3 non-network stations, and a recorded radio repeat is broadcast from 12

midnight to 12:30 a. m. (New York time) over 14 stations of the

NBC sound network located on the Pacific Coast. Every

285 Thursday from 8-8:30 p. m. (New York time) a television

version is broadcast over 37 stations of the NBC television

network, and a kinescope recording is broadcast over an additional

26 stations of the NBC television networks at varying hours. The

gross time charge to the sponsors is approximately \$15,600 for

the sound broadcast and \$30,100 for the television broadcast each

week. Prior to the broadcast the master of ceremonies selects

from the studio audience a number of individuals whom he expects

to be the most able and interesting contestants and groups them

in teams of two. Each team is permitted to choose a category of

questions to be asked them from several categories submitted to

them. Each category contains four questions. The team is sup-

plied with \$20 before the first question is asked. They may bet

any part or all of this amount on their ability to answer the first

question correctly. If they succeed, the amount which they bet

is added to the \$20; if they fail, such amount is subtracted from

the \$20. The process is repeated for each of the remaining three

questions. If, in the course of such questions, a team loses the

entire \$20, they are given the opportunity to answer correctly a

simple question for \$25 and are then retired without any further

opportunity to bet. The team which completes its category with

the most money is given the opportunity to answer the jackpot

question at the end of the program. If two or more teams have

won an identical sum which is the largest amount won, such teams

compete for the jackpot. The jackpot commences at \$1,000 and

an amount of \$500 is added each week that the jackpot question

is not answered correctly. A new jackpot question is asked each

week. In addition, an amount of \$100 is paid to that team either

member of which mentions, in the course of their participa-

286 tion in the program a secret word which was selected before

the broadcast and announced to the studio and listening

audiences and as to which a clue is given to the teams. Such

amount cannot be used for betting nor is it used in computing the

amount won by a team to determine their eligibility for the jack-

pot question. A transcript of the radio broadcast of this program

which occurred on April 4, 1951, is attached hereto, marked Ex-

hibit C, and made a part hereof.

14. "The \$64 Question" is a studio audience participation pro-

gram broadcast for many years by NBC but which is not currently

being broadcast. NBC considers that it may desire to resume

broadcasting this program in the future. The following descrip-

tion is of the format of the program as broadcast in April, 1952.

There was no admission fee to the broadcast. The program was

broadcast every Sunday from 9:30-10 p. m. (New York time) over 141 stations of the NBC sound network. Although it had been commercially sponsored for many years under its present title and under its former title "Take It or Leave It," it was being broadcast on a sustaining basis. Prior to each broadcast the master of ceremonies selected from the studio audience a number of persons whom he expected to be the most able and interesting contestants. Each contestant in his turn, was permitted to select one of several categories of questions submitted to him. The contestant was then asked a series of seven questions from the category chosen. A correct answer to the first question won a prize of \$1 and the prize doubled in value for each succeeding question correctly answered, up to \$64 for correct answers to all seven questions. A contestant might elect to stop after any correct answer and collect the amount won to that point. If a contestant answered any questions incorrectly, he lost the amount theretofore won and was retired, and an amount equal to the value

of the question incorrectly answered was added to the jackpot. All contestants competed for the jackpot question at the end of the program. A new jackpot question was asked each week. The jackpot began at \$64, to which was added amounts as aforesaid. If the jackpot was not won on any given program, it was carried over in full from program to program. A transcript of the broadcast of this program which occurred on April 1, 1951 is attached hereto, marked "Exhibit D," and made a part hereof.

15. "The Paul Winchell-Jerry Mahoney Show" playing "What's My Name," involves participation by both the studio and listening audiences. There is no admission fee to the broadcast. The program is broadcast every Monday from 8-8:30 p. m. (New York time) over 35 stations of the NBC television network and a kinescope reproduction is broadcast over an additional 19 stations of the NBC television network at varying hours. The gross time charge to the sponsor is approximately \$26,800 each week. Prior to the broadcast the master of ceremonies selects from the studio audience a number of participants, each of whom is asked to identify a person from clues given by the master of ceremonies and from a scene depicted by professional performers. Each participant receives a gift of the sponsor's merchandise and, if he correctly identifies the person, a \$100 United States Savings Bond. If he fails to identify such person, he receives a \$25 bond and a \$100 bond is added to the jackpot. The jackpot starts at \$500 in bonds and if not won on any given program is carried over in full from program to program. Opportunity to win the jackpot is available only to the listening audience. Listeners who wish to



participate send in postcards bearing their names, addresses, telephone numbers and call-letters of the stations to which they are listening. Each week several of these postcards are selected at random and telephone calls made to the individuals named thereon in the order of their selection. No other use is made of  
 288 the postcards. The first individual called who answers the telephone receives a gift of the sponsor's merchandise and is given the opportunity to win the jackpot by identifying a person from clues given by the master of ceremonies and from a scene depicted by professional performers. If he fails, the jackpot is carried over in full, together with an additional \$500 in bonds, to the following program. The subject of the jackpot question is changed each week. A transcript of the broadcast of this program which occurred on March 12, 1951, is attached hereto, marked "Exhibit E," and made a part hereof.

16. "Double or Nothing" is a program in which the primary participation is by members of the studio audience. There is no admission fee to the broadcast. The program is broadcast every Monday through Friday from 10:30-11 a. m. (New York time) over 129 stations of the NBC sound radio network and the programs are repeated over 36 additional NBC sound radio network stations at varying hours. The gross time charge to the sponsor is approximately \$36,200. Prior to the broadcast the master of ceremonies interviews a number of persons in the studio audience and selects those whom he expects to be the most able and interesting contestants. Each contestant is permitted to choose one of several categories of questions submitted to him. Before commencing the questions in the category selected, the master of ceremonies asks of each contestant a question calling for the contestant to make an estimate. The contestant whose estimate is closest to the correct answer wins a prize of \$80. After such question, the contestant is asked a series of four questions from the category selected by him. A correct answer to the first question wins a  
 289 prize of \$2 and the prize increases to \$10 for correct answers to all four questions. Up to this point the contestant may elect to stop after any correct answer and collect the amount won. If the \$10 question has been correctly answered the contestant is given the opportunity to increase his winnings to \$20 and then to \$40 by correctly answering the two following questions. If either of such questions is incorrectly answered, the contestant loses the amount theretofore won by him and such amount is added to the jackpot which starts at \$100. At the close of the program all contestants participate in the jackpot question. Members of the listening audience are invited to submit questions on a label of one of the sponsor's products. One such question is selected each day and the person submitting such question receives



one-half of the jackpot for that day. The contestant who answers the jackpot question correctly receives the other half of the jackpot. If none of the participants is able to answer the jackpot question correctly, the one-half of the jackpot reserved for the contestants is added to the jackpot for the next succeeding program. A transcript of the broadcast of this program occurring on April 3, 1951, is attached hereto, marked "Exhibit F," and made a part hereof.

17. On information and belief, none of the programs described in paragraphs 13 to 16, and no similar program broadcast by NBC have ever been held by any court to be in violation of Section 1304 of the United States Criminal Code, or of any state lottery statute, and no criminal proceedings have ever been brought against any person or corporation on the ground that any such program violated any criminal statute.

18. The Commission did not have before it in the record on which it acted any evidence that these or any similar programs were contrary to or adversely affected the public interest, or that the broadcast licensees broadcasting such programs were of bad character or otherwise unfit to hold such licenses. The Commission made no finding that any of the programs coming within the terms of the Order was contrary to or adversely affected the public interest except in so far as they may violate Section 1304 of the United States Criminal Code.

19. Under the provisions of the Communications Act, no radio or television stations may operate without a license issued by the Commission. Licenses are granted by the Commission for a term of three years for standard and frequency modulation stations and one year for television stations. The licenses of all radio and television stations owned and operated by or affiliated with NBC will expire within less than three years from the date hereof. The stations owned and operated by NBC have a value of many millions of dollars which will be destroyed if its licenses therefor are not renewed. The stations affiliated with NBC also have a value of many millions of dollars which will be destroyed if their licenses are not renewed.

20. On information and belief, if the Order is not enjoined and is enforced in accordance with its terms, unless NBC ceases to broadcast programs which violate it, the Commission will thereafter deny all applications made by NBC or its affiliated stations carrying such programs, for construction permits, licenses, renewal of licenses, or any other authorizations for the operation of sound or television broadcast stations. In addition, the Commission has the power to revoke, and might in such circumstances, revoke, licenses of such stations prior to their expiration.

21. NBC's principal source of revenue in the conduct of its business is the sale of broadcast time to advertisers. Gross revenue from time sales is divided by NBC with the stations affiliated with it in accordance with the terms of its affiliation contracts. In some instances the programs broadcast in the purchased time periods are supplied by the advertiser at its own expense, and in other instances they are supplied by NBC, in which case NBC makes an additional charge for the program. The program described in paragraph 13 hereof is and that described in paragraph 14 was supplied by NBC, which has made a substantial investment therein. The programs described in paragraphs 15 and 16 hereof are not supplied by NBC, and the sponsors thereof expend considerable sums weekly for such program in addition to the amounts paid to NBC.

22. If NBC should cease to broadcast all programs which would appear to fall within the terms of the Order, the listening audience now commanded by such programs may be lost and revenues of NBC from the sale of time will diminish.

23. On information and belief, there is no procedure whereby a broadcast licensee or any other person interested in broadcasting a given program can obtain from the Commission a ruling in advance of the broadcast as to whether the program is in the Commission's opinion in violation of the Order.

24. If the Order is not enjoined, NBC, because of its inability to obtain advance rulings, will be able to protect itself from the loss of its licenses only by ceasing to broadcast not only programs which are within the terms of the Order but also any programs which might in the future possibly be deemed by the Commission to come within the Order, even if NBC in good faith considers that such a construction of the Order would be incorrect.

25. The necessary effect of the Order upon NBC if it is enforced will be such as to render less valuable the conduct of NBC's business.

26. NBC will suffer substantial and irreparable injury if enforcement of the Order is not permanently enjoined.

27. Plaintiff alleges that each and every paragraph of the Order is void and beyond the power, authority and jurisdiction of the Commission to impose, for each of the following reasons:

(a) The Commission is without power, authority or jurisdiction to promulgate rules and regulations interpreting or purporting to interpret Section 1304 of the Criminal Code;

(b) The Commission is without power, authority or jurisdiction to promulgate rules and regulations or to use its licensing powers, directly or indirectly, so as

(I) to impose or threaten to impose sanctions or penalties for conduct allegedly in violation of Section 1304 of the Criminal Code, but not adjudicated as such by any court; or

(II) to impose or threaten to impose sanctions different from or in excess of those expressly provided by Congress for violations of Section 1304 of the Criminal Code;

(c) The Commission is without power, authority or jurisdiction to adopt or, in exercising its licensing functions to apply:

(I) Rules pursuant to which application for authorization for the operation of broadcasting stations are automatically to be denied on the sole basis of a violation of Section 1304 of the Criminal Code;

(II) Rules pursuant to which applications for authorization for the operation of broadcasting stations are automatically to be denied on the sole basis of an unadjudicated violation of Section 1304 of the Criminal Code;

293 (III) Rules pursuant to which applications for authorization for the operation of broadcasting stations are automatically to be denied on the sole basis of a violation of the Commission's interpretation of Section 1304 of the Criminal Code;

(d) The Order and Rules adopted by the Commission as a matter of law incorrectly interpret and apply Section 1304 of the Criminal Code;

(e) The Order and Rules are arbitrary, capricious and contrary to the public interest;

(f) The Order and Rules are an abuse of the discretionary power vested in the Commission by the Communications Act;

(g) The Commission entered the Order upon the basis of considerations and standards not fixed or prescribed by the Communications Act of 1934 and upon which the Commission has no power, authority or jurisdiction to pass;

(h) The Order and Rules are contrary to Section 326 of the Communications Act of 1934 as amended;

(i) The Order and Rules are in violation of Sections 4 (b), 5 (a), (b), (c), 7 (a), (c), (d), 8 (a), (b) and 9 (a) of the Administrative Procedure Act; (60 Stat. 237, 5 U. S. C., Section 1001, et seq.)

(j) The Commission has usurped the power of Congress, if any there be, to determine the contents of radio and television programs and what sanctions and other penalties shall be imposed for violations of a statute;

(k) The Order and Rules, if authorized by any provision of the Communications Act of 1934, violate the First Amendment to the Constitution of the United States;

294 (1) The Order and Rules, if authorized by any provision of the Communications Act of 1934, deprive the plaintiff of property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States;

(m) The Order and Rules constitute, or have the form and effect of a bill of attainder, contrary to Clause 3 of Section 9 of Article 1 of the Constitution of the United States;

(n) The Order and Rules, if authorized by any provisions of the Communications Act of 1934, subject plaintiff to punishment without a hearing by any court in violation of Article III of the Constitution of the United States;

(o) The Order and Rules, if authorized by any provision of the Communications Act of 1934, deprive plaintiff of the right to a trial by jury in a criminal prosecution in violation of the Sixth Amendment to the Constitution of the United States.

28. Plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays:

1. That a court of three judges constituted as required by Title 28, United States Code (28 U. S. C. §§ 2284, 2325) be convened, hear and determine this action.

2. That said Court grant an interlocutory injunction restraining and enjoining, pending final hearing and determination herein, the enforcement, operation or execution of the Order in whole or in part.

3. That, after final hearing, said Court adjudge, order and decree that the Order is, and has at all times been, beyond the lawful authority of the Commission, in violation of the  
295 legal rights of plaintiff, and is wholly void, arbitrary and unreasonable, and that the Order be perpetually vacated, set aside, suspended and annulled and the enforcement thereof perpetually restrained and enjoined.

4. That plaintiff may have such other and further relief in the premises as may be deemed by this Court to be just and equitable.

CAHILL, GORDON, ZACHRY  
& REINDEL,

By JOHN W. NIELDS,

*A Member of the Firm,*

*Attorneys for Plaintiff, National Broadcasting Company, Inc. Office and Post Office Address: 63 Wall Street, City, County, and State of New York.*

Date: New York, N. Y., September 22, 1952.

## FEDERAL COMMUNICATIONS COMMISSION

[47 CFR, Part 3]

[Docket No. 9113]

BROADCASTING OF INFORMATION CONCERNING LOTTERIES, GIFT  
ENTERPRISES OR SIMILAR SCHEMES

## Notice of Proposed Rule Making

In the matter of promulgation of rules governing programs prohibited by section 316 of the Communications Act as broadcasting of information concerning lotteries, gift enterprises or similar schemes.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission proposes to issue new rules, set forth below, to be designated as §§ 3.192, 3.292 and 3.692. These rules would set forth with particularity for standard FM and television broadcasting, certain types of programs which the Commission believes are in violation of section 316 of the Communications Act of 1934, as amended, which prohibits the broadcast of "any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance." The rules are intended to afford broadcast licensees with as specific advance information as is possible as to the various types of programs which the Commission considers are in violation of the section of the act.

3. It should be pointed out that, as specified in the proposed rules themselves, no one rule or set of rules can cover the almost infinite number of varieties of program formats bordering on illegal lotteries or gift enterprises, and the determination as to whether a particular program violates section 316 will necessarily depend on the facts of the particular case. However, it is believed that the proposed rule will be of aid and assistance to licensees in determining whether a given program falls within the type of program specified by the proposed rules as a lottery, gift enterprise or similar scheme.

4. The proposed rules are issued under the authority of sections 316, 4 (i) and 303 (r) of the Communications Act of 1934, as amended.

5. Any interested party who is of the opinion that the proposed rules should not be adopted, or should not be adopted in the man-

ner set forth below, may file with the Commission on or before September 10, 1948 a statement or brief setting forth his comments. At the same time persons favoring the rules as proposed may file statements in support thereof. The Commission will consider all such comments that are presented before taking action in the matter, and if any comments are submitted which appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

6. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Released: August 5, 1948.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,  
T. J. SLOWIE, *Secretary*.

§ 3.192 PROGRAMS COVERED BY SECTION 316 OF THE COMMUNICATIONS ACT.—(a) Section 316 of the Communications Act of 1934 provides in part that no radio station "shall knowingly permit the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift, enterprise, or scheme, whether said list contains any part or all of such prizes".

(b) The determination as to whether a particular program violates the provisions of section 316 of the Communications Act of 1934 depends on the facts of each case. However, the Commission will in any event consider that a program is in violation of section 316 if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in any manner upon lot or chance, if as a condition of winning such prize:

(1) Such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question; or

(2) Such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

(3) Such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous pro-

gram will be considered as an aid in answering the question correctly; or

(4) Such winner or winners are required to answer the phone or write a letter if the phone conversation or contents of the letter (or the substance thereof) are broadcast by the station.

298 Sections 3.292 and 3.692 proposed to be issued with respect to FM and Television broadcasting would read exactly the same as § 3.192.

[F. R. Doc. 48-7366; Filed, Aug. 16, 1948; 9:00 a. m.]

299 *Exhibit A-2 to amended complaint*

# FEDERAL COMMUNICATIONS COMMISSION

[47 CFR, Part 3]

[Docket No. 9113]

## BROADCASTING OF INFORMATION CONCERNING LOTTERIES, GIFT ENTERPRISES OR SIMILAR SCHEMES

### Supplemental Notice of Proposed Rule Making

1. Supplemental notice is hereby given of proposed rule making with respect to the broadcasting of lottery information. On August 5, 1948, the Commission released a notice of proposed rule making with respect to this matter.

2. On June 25, 1948 by Public Law 772, 80th Congress 2d Session, section 316 was removed from the Communications Act of 1934 and recodified effective September 1, 1948 as section 1304 of the United States Criminal Code, 18 U. S. C. section 1304. This change was part of a general revision of laws relating to federal crimes which included among its purposes, the recodification of the Criminal Code and of criminal provisions not already in that code which could be transferred from other titles without injury to their text. No substantive change in the applicable law with respect to the broadcast of lottery programs was apparently contemplated by the recodification. See 93 Congressional Record, pp. 5048-5049; H. Rep. No. 304, 80th Cong. 2d Sess., p. A-99 (Reviser's notes). Accordingly, the Congress has reaffirmed the public policy embodied in section 316 of the Communications Act and has renewed the determination that it is contrary to the public interest to permit the broadcasting of lottery programs over the air.

3. This Commission is authorized to and has the duty to consider in connection with its general licensing authority policies affecting radio expressed in other acts of Congress. See *McLean Trucking Company v. United States*, 326 U. S. 67; *Southern Steamship Company v. NLRB*, 316 U. S. 31. It has authority,



therefore, in determining whether a grant of a given license application would serve the public interest, convenience or necessity, to consider the Congressional mandate that no licensee should broadcast any program containing any advertisement or information concerning any lottery, gift enterprise or similar scheme. And in so doing the Commission is not required to await prior judicial determination that a given program is in violation of section 1304 of the Criminal Code. *Public Clearing House v. Coyne*, 194 U. S. 497; *Southern Steamship Company v. NLRB*, 316 U. S. 31. And the Commission is authorized to issue general rules setting forth for the information of licensees its intention to refuse licenses to persons operating in violation of the Congressional prohibition against the broadcast of lottery information set forth in section 1304 of the Criminal Code. See *National Broadcasting Company v. United States*, 319 U. S. 190.

4. Accordingly, the Commission proposes to adhere to its determination of August 5, 1948 that rules with  
300 respect to the broadcasting of lottery information should be promulgated by this Commission. Notice is hereby given that rules, similar in form to the Chain Broadcasting regulations, §§ 3.101-3.108 of the rules dealing with the qualifications of licensees, are proposed to be promulgated. These proposed rules are designed to assist the Commission, licensees, and other interested persons in giving effect to the public policy embodied in the determination of Congress that the United States should not "permit any radio station licensed and regulated by the government to engage in such unlawful practices." Senate Report 1045 on H. R. 7716, 72d Congress, 2d Session.

5. The proposed rules would also set forth with particularity, as set out in the Appendix of the notice of proposed rule making issued August 5, 1948 for standard, FM and television broadcasting, certain types of programs which the Commission believes are clearly prohibited by section 316 of the Communications Act of 1934 as amended (effective September 1, 1948, section 1304 of the U. S. Criminal Code, 18 U. S. C.) which makes criminal the broadcast of "any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance." These specifications of various types of programs which the Commission will consider to be lotteries, gift enterprises or similar schemes in violation of law, are intended to afford broadcast licensees an opportunity to be informed, so far as it is possible to do so, of the interpretation of the law with respect to these matters which the Commission proposes to apply in the exercise of its licensing functions. These proposed rules therefore are entirely interpretative in nature and do not purport to add to or detract from the statutory prohibition imposed by Congress.

6. The proposed rules are issued under the authority of sections 4 (i) and 303 (r), 307 (a), 308 (b) and 309 (a) of the Communications Act of 1934, as amended.

7. Any interested party who is of the opinion that the proposed rules should not be adopted or should not be adopted in the manner proposed may file with the Commission on or before September 10, 1948, a statement or brief setting forth his comments. At the same time persons favoring the rules as proposed may file statements in support thereof. The Commission will consider all such comments that are presented before taking action in the matter, and if any comments are submitted which appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

8. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission:

301 Adopted: August 26, 1948.

Released: August 27, 1948.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,  
T. J. SLOWIE, *Secretary*.

[F. R. Doc. 48-7805; Filed, Aug. 31, 1948; 8:52 a. m.]

302 *Exhibit B to amended complaint*

39551-8/49

FCC 49-1155

Before the Federal Communications Commission

WASHINGTON 25, D. C.

Docket No. 9113

In the Matter of Promulgation of Rules Governing Broadcast of  
Lottery Information

REPORT AND ORDER

By the COMMISSION: (Commissioners Coy, Chairman; Hyde and Jones not participating; Commissioner Hennock dissenting).

The Commission has this day determined to adopt the attached interpretative rules, set forth in the appendix to this Report, to be designated as Sections 3.192, 3.292, and 3.692. These rules set forth for the guidance of all broadcast licensees and other interested persons the Commission's interpretation of Section 1304 of the United States Criminal Code (18 U. S. C. 1304) prohibiting the broadcast of any lottery, gift enterprise, or similar scheme

which the Commission intends to follow in licensing proceedings in determining whether an applicant for a station license or renewal thereof is qualified to operate his station in the public interest. A Notice of Proposed Rule Making concerning this subject was issued by the Commission on August 5, 1948 and a Supplemental Notice of Proposed Rule Making was issued on August 27, 1948. Interested parties were afforded an opportunity to file briefs or statements setting forth why they believe the rules should or should not be adopted and oral argument on the matter was held before the Commission en banc on October 19, 1948.

Two major objections have been raised to the adoption of the proposed rules. In the first place, it is alleged that the Commission is not authorized by law to promulgate Rules or Regulations setting forth the type of programs the broadcast of which the Commission believes to be within the scope of the prohibition of Section 1304 of the Criminal Code, and therefore, contrary to the public interest. It has also been argued that even if the Commission possesses such rule-making authority, the particular rules proposed by the Commission do not, as a matter of substantive law, set forth violations of Section 1304. After careful consideration of these contentions, we have concluded, for the reasons set out below, that they are without merit and that the Rules should be adopted.

## I

On the question of jurisdiction to promulgate the rules, we are able to reach the conclusions that the status of the  
 303 prohibition on the broadcasting of lottery, gift enterprise, and similar schemes as a provision of the Criminal Code does not affect the fact that it is an important declaration of public policy by Congress in the broadcast field; that the Commission is under a duty to give effect to such public policy in its licensing functions; that this duty must be performed even where other agencies or the courts have concurrent powers which have not been exercised in the particular case before the Commission; that the Commission may in the exercise of authority under Section 4 (i) and 303 (r) of the Communications Act, set out in interpretative rules for the information and guidance of licensees and other interested persons, its interpretation of a statute, expressing public policy in the broadcast field and, therefore, an aspect of the standard of the public interest to be applied in licensing proceedings under Sections 307, 308, and 309 of the Communications Act; and that the issuance of such interpretative rules is in accordance with the provisions of the Administrative Procedure Act.

Section 1304 is itself a criminal provision making the broadcast of any lottery, gift enterprise or similar scheme by any broadcast licensee punishable by fine, imprisonment or both. It does not differ in this respect from the former Section 316 of the Communications Act which carried its own express penal sanctions. The reenactment of the substance of Section 316 of the Communications Act as Section 1304 of the Criminal Code on July 25, 1948, by Public Law 772, 80th Congress, 2nd Session, as part of a general recodification of the criminal law was not intended to affect, and did not in any way affect or change the impact of the prohibition against the broadcast of lottery information as a criminal prohibition expressing the public policy of the United States against the broadcasting of such programs. Both Section 1304 and the former Section 316 impose a duty upon the Department of Justice to prosecute apparent violations of the prohibition coming to its attention and, similarly, impose an obligation upon this Commission, as the agency of the federal government most closely in touch with the day-to-day operation of radio broadcasting, to refer those violations of the Section which come to its attention to the Department of Justice for appropriate action. It has been suggested that such periodic reference to the Department of Justice of apparent violations of law is the only obligation imposed upon this Commission, but this is clearly not so. Violation of any provision of law by a broadcast licensee or prospective licensee obviously is relevant to a determination as to whether such person has the requisite character qualifications of a licensee and to operate a station in the public interest. *Mester Brothers v. United States*, 70 F. Supp. 118, affirmed, 332 U. S. 749; see *Southern Steamship Company v. National Labor Relations Board*, 316 U. S. 31. This is especially true when the law involved deals directly with broadcasting and expresses a public policy so clear and strong that violation is made a criminal offense.

304 It is equally clear that the Commission may consider any violation of the prohibition against the broadcast of lottery information whether or not there has been a prior judicial determination in the particular case. *National Broadcasting Company v. United States*, 319 U. S. 190; *Southern Steamship Company v. National Labor Relations Board*, 316 U. S. 31, Cf., *Public Clearing House v. Coyne*, 194 U. S. 487. As the Supreme Court pointed out in the *Southern Steamship* case, *supra*, at pp. 46-47, the respective administrative agencies have an individual responsibility for giving effect to the public policy of the nation expressed in statutes other than their own, which cannot be avoided or postponed until some other agency or branch of the government, which may also have a responsibility arising out of the same legis-

lative mandate, has acted.<sup>14</sup> In the present case, the relevant facts so far as the Commission is concerned, are that Congress in its enactment of Section 1304 and its predecessor, Section 316 of the Communications Act, has clearly determined that broadcasts of lotteries, gift enterprises, or similar schemes are not in the public interest; the additional determination that the carrying of such broadcasts may subject the offender to imprisonment or payment of fine does not in any way limit the Commission's responsibility to give heed to the explicit Congressional declaration as to the public interest in the broadcast field.

It has been argued that, whatever power the Commission might have to consider violations of the provisions of Section 1304 on a case-to-case basis, it may not adopt general rules setting out in advance for the information of licensees the course of action it intends to pursue. In our opinion, the determination to issue

interpretative rules rather than to enunciate its views from case-to-case is not only proper but, under the circumstances, the only reasonable course for us to have taken. It should be made clear that these rules are not intended to require any licensee to refrain from taking any action which is not already forbidden by statute. They merely set forth, to the extent that any general statement is possible, the Commission's interpretation of the existing Congressional mandate with respect to broadcasts of lotteries, gift enterprises, and similar schemes. As such, they will provide licensees with information by which they may better determine, in advance of Commission action in licensing proceedings, the interpretation of the law which the Commission will follow in determining the legality of particular programs in licensing proceedings.

In view of the almost infinite variety of program format details possible in connection with "give away" schemes, interpretation of the statute solely on a case-to-case basis may readily leave licensees in deep confusion as to the applicability of the statute in situations other than the precise scheme involved in a particular case. But despite the variety of possible details, a number of common recurrent features, which embody the elements at which the statute is aimed, can be identified in order to clarify the application of

<sup>14</sup> In the course of the legal attack upon the Commission's Chain Broadcast rules a similar claim was made that the Commission could not consider activities which might possibly constitute unconvicted violations of the antitrust laws since, under Section 311 of the Communications Act, it was authorized to refuse a license to any person who had been found guilty of violating these laws. In rejecting this argument and upholding the right of the Commission to promulgate its rules the Supreme Court stated (*National Broadcasting Company v. United States*, 319 U. S. 223):

"A licensee charged with practices in contravention of this standard [public interest, convenience or necessity] cannot continue to hold his license merely because his conduct is also in violation of the antitrust laws and he has not yet been proceeded against and convicted . . . Nothing in the provisions or history of the Act lends support to the inference that the Commission was denied the power to refuse a license to a station not operating in the 'public interest' merely because its misconduct happened to be an unconvicted violation of the antitrust laws."

the statute in particular situations. Announcement of interpretative rules in an area where the details may obscure the more general principles which are readily identified, thus serves both to diminish the perils of uncertainty and to remove the refuge of the opinion of counsel, which may vary not only with different cases, but with different counsel. Just as the licensee is entitled to come before the Commission and state that he relied on the opinion of counsel in determining what was illegal and contrary to the public interest, so the Commission may afford the licensee guidance by stating what it believes the law to be in the form of interpretative rules.

Since any such interpretative rules are controlling in any court review only to the extent that they are found by a reviewing court to embody a proper interpretation of the law they purport to interpret, Cf *Skidmore v. Swift & Co.*, 323 U. S. 134, 140, adoption of the rules may make available to persons who may have property interests directly and immediately affected adversely by their adoption an opportunity to secure a judicial determination of the validity of any such application of the rules in advance of Commission action in licensing proceedings and without the expense, delay in time and licensee jeopardy which would be involved if the Commission's interpretation of the law were to be developed and disclosed only in the course of such proceedings. Cf. *Columbia Broadcasting System v. United States*, 316 U. S. 407.

Sections 4 (i) and 303 (r) of the Communications Act expressly authorize the Commission to make such rules and regulations, not inconsistent with "this Act" or "law", as may be necessary either "in the execution of its (Commission's) functions", or "to carry out the provision of this Act." The claim that in spite of these provisions the Commission, in the exercise of its licensing func-

306 tions must announce applicable principles of law only on a case-to-case basis and may not issue general rules setting forth its understanding of the applicable law to be applied to recurring general problems of interest and importance to all licensees and applicants, has been expressly rejected by the courts. See *National Broadcasting Company v. United States*, 319 U. S. 190 affirming 47 F. Supp. 940; *Columbia Broadcasting System v. United States*, 316 U. S. 407, 420-421; *Heitmeyer v. Federal Communications Commission*, 63 App. D. C. 180, 95 F. 2d 91; *Ward v. Federal Communications Commission*, 71 App. D. C. 166, 108 F. 2d 486; Cf. *Stahlman v. Federal Communications Commission*, 75 App. D. C. 176, 126 F. 2d 124; *Securities & Exchange Commission v. Chenery Corp.*, 332 U. S. 194; *Lichter v. United States*, 334 U. S. 742. As Judge Learned Hand stated for the District Court in the *National Broadcasting* case, *supra*, (47 F. Supp. 945):



"The plaintiffs next challenge the regulations because they lay down general conditions for the grant of licenses instead of reserving decisions until the issues arise upon an application. Such a doctrine would go far to destroy the power to make any regulations at all; nor can we see the advantage of preventing a general declaration of standards which, applied in one instance, would in any event become a precedent for the future."

These considerations are applicable with even greater force where the administrative agency is not promulgating rules which constitute an exercise of delegated authority to forbid or require specified conduct on the basis of findings as to the public interest in the particular field, as in the National Broadcasting Company case, *supra*, but is rather issuing interpretative rules for the purpose of stating its understanding of what Congress itself has found to be contrary to the public interest and has itself forbidden.

What we have said above disposes of the claim that the adoption of these rules would be in violation of Section 9 (a) of the Administrative Procedure Act, 5 U. S. C. 1009 which provides that "no sanction shall be imposed or substantive rule or order be issued except within the jurisdiction delegated to the agency and as authorized by law." As the legislative history of the provision makes clear, Section 9 (a) was not intended to prohibit the issuance of any rules which an agency would otherwise be authorized to issue but was merely designed to "afford statutory recognition for the basic rule of law embodied in judicial decisions." Senate Judiciary Committee Print, June 1945, in Sen. Doc. No. 248, 79th Cong. 2d Sess. p. 34. See also Sen. Doc. No. 248, p. 229 (Attorney General's Interpretation). And both the Senate and House Reports on the bills, which because the Administrative Procedure Act, made clear that Section 9 (a) was intended to prevent agencies from imposing types of sanc-  
 307 tions which they had not been specifically or generally authorized to impose. Thus, if the Commission had not been given authority by Sections 4 (a) and 303 (r) to issue such general rules and regulations as might be necessary in the performance of its duties, and if sections 307, 308, and 309 of the Communications Act did not authorize the Commission to consider relevant aspects of the public interest in licensing proceedings, Section 9 (a) of the Administrative Procedure Act would have prevented the Commission from assuming such rule-making power just as it prevents the Commission from issuing cease and desist orders in the absence of authority to do so. See Senate Report on S. 7 in Sen. Doc., 248, 79th Cong. 2d Sess. p. 211 and House Report on S. 7 in Sen. Doc. 248, 79th Cong. 2d Sess. p. 274.



While the Senate Report, *supra*, makes clear that Section 9 (a) of the Administrative Procedure Act prohibits one agency from exercising the functions of another, these rules, as indicated above, are not an enforcement of the Department of Justice's authority to prosecute violations of Section 1304 of the Criminal Code, but an aid to the exercise of the Commission's independent jurisdiction and authority to license applicants for station licenses when, and only when, the grant of such application would serve the public interest, convenience, or necessity.

## II

After examination of the arguments presented, the Commission is convinced that the features of programs covered by the proposed rules come within the scope of the languages "lotteries, gift enterprises, or similar schemes dependent in whole or part on lot or chance" set forth in Section 1304 of the Criminal Code. For the purposes of considering whether the rules before us are a proper interpretation of the statute, it is unnecessary to resolve the question of the extent to which the statutory terms "gift enterprises or similar scheme" may include more than the statutory term "lotteries". For, in interpreting the statute we conclude that the statutory term "lottery" includes more than the popular conception of "lottery" in which the opportunity of participating in the selection of a winner of prizes is itself purchased and paid for in cash. This view is borne out by the case of *Horner v. United States*, 147 U. S. 449. Since the proposed rules all deal with situations which contain in some manner all of the three elements of prize, chance, and some form of consideration, which have been held by the courts to be the essential features of lotteries, it is unnecessary to resolve the open question of whether the statutory terms are intended to cover a wider area."<sup>15</sup>

308 The element of "prize" raises no substantial problem—all of the program schemes described in the rules involves the distribution of money or other valuable prizes. There is similarly no serious question concerning the element of chance. While there are many bona fide contests open to all in which the element of skill is primarily determinative of the winner or winners of the

<sup>15</sup> It must be recognized that the statute itself does not prescribe the element of consideration. The statute itself therefore leaves open the view that any scheme containing the characteristics of "offering prizes depending in whole or in part on lot or chance" is within the scope of its prohibition, and that the language "similar scheme" refers to the common possession of these characteristics and is not intended to limit the application of the statute to such schemes as are found to possess all the elements of lotteries, in addition to those aspects of lotteries which are identical with the characteristics which are in terms described in the statute. However, we leave this question open, for we do not now intend to foreclose by these interpretative rules a judicial conclusion that we have not covered as many situations as the language and intent of the statute extend to. We believe that in any event the types of schemes covered by our interpretative rules are within the scope of the statute, whether it be narrowly read in terms of the requisites for lotteries, or whether it be more broadly read.

prizes which the statute does not forbid, in each of the cases set forth in the attached rules the element of chance determines in whole or in part the identity of the persons to whom the prize is to be awarded.

The only substantial issue presented is whether such programs also involve the element of "consideration", assuming it to be a necessary element of schemes forbidden by the statute. We think that in each of the instances specified by the rules, consideration of some form is present. While only category "J" requires a prospective winner to have directly contributed money or purchased goods as a condition of success, it has been clear even since the decision of the Supreme Court in *Horner v. United States*, 147 U. S. 449 (1893) that no such restricted definition of the term "consideration" is applicable to the problem and that a scheme may come within the scope of the statutory prohibition, which offers prizes dependent upon lot or chance even where the participants in the schemes are not risking the loss of any money through their participation.

In determining whether the element of consideration is present in any radio "giveaway" schemes, we must consider the problem in context of the unique nature of the medium of radio. Unlike the motion pictures and theatre, no charge is made by the licensee to members of the public for access to any programs. Nor, as in the case of newspapers and magazines, must a copy of a publication be purchased to secure the information, entertainment and advertising presented. Section 3 (c) of the Communications Act defines "Broadcasting" as "the dissemination of radio communications intended to be received by the public \* \* \*". Most licensees support their operations by the sale of time to advertisers who seek to reach the public.<sup>16</sup> We take official notice of the fact that one of the most important factors in securing sponsors for radio time is the number of people who probably or actually listen to the station's programs, as determined by listener surveys and other means. Therefore, especially when the listener  
309 has available a choice of services, the licensee seeks to attract the listener to create "circulation" as a basis for the sale of radio time, and the sponsor seeks to attract the listener so that the sponsor's advertising message may be delivered and the listener induced to purchase the sponsor's product or services.<sup>17</sup>

<sup>16</sup> Public Service Responsibility of Broadcast Licensees, 40-41.

<sup>17</sup> In the opinion of the Supreme Court in *Federal Communications Commission v. Sander Brothers*, 309 U. S. 470, Mr. Justice Roberts observed:

"Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who was not interfering electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public."

In this context, preoccupation with such forms of furnishing of consideration to the advertiser, by such means as the purchase of his product or the furnishing of box tops as a condition precedent to participation in a scheme may obscure the valuable benefit furnished to the licensee in the form of "circulation" when the listener is induced by a scheme for the awarding of prizes based on chance to listen to a particular station and program. Cf. *Brooklyn Daily Eagle* 1. Voorhies, 181 Fed. 579, 581-582 (C. C. E. D. N. Y.). Where such a scheme is designed to induce members of the public to listen to the program and be at home available for selection as a winner or possible winner, there results detriment to those who are so induced to listen when they are under no duty to do so. And this detriment to the members of the public results in a benefit to the licensee who sells the radio time and "circulation" to the sponsor, and to the sponsor as well, who presents his advertising to the audience secured by means of the scheme. When considered in its entirety, a scheme involving award of prizes designed to induce persons to listen to the particular program, certainly involves consideration furnished directly or indirectly by members of the public who are induced to listen. Any supposition that there must be a direct sale or other form of contract before a scheme involving some form of consideration is presented does not take into account the nature of the medium of broadcasting and its economics. We do not believe that Congress in announcing a public policy particularly applicable to the field of broadcasting intended only to proscribe schemes designed for other media such as direct solicitation or publications, and intended that the relevant legal analysis should not take into account the nature of the medium of radio.

Accordingly, it is ordered this 18th day of August, 1949, that Sections 3.192, 3.292 and 3.692 as set forth in the attached appendix be adopted effective October 1, 1949.

By direction of the Commission:

T. J. SLOWIE,  
*Secretary.*

Attach.

Released: August 19, 1949.

The following is the text of Section 3.192, 3.292 and 3.692.

**LOTTERIES AND GIVE-AWAY PROGRAMS.**—(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to fol-

low a policy or practice of broadcasting or permitting "the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes." (See U. S. C. § 1304.)

(b) The determination whether a particular program comes within the provisions of subsection (a) depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of subsection (a) if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize;

(1) such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question; or

(2) such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

(3) such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous program will be considered as an aid in answering the question correctly; or

(4) such winner or winners are required to answer the phone in a prescribed manner or with a prescribed phrase, or are required to write a letter in a prescribed manner or containing a prescribed phrase, if the prescribed manner of answering the phone or writing the letter or the prescribed phrase to be used over the phone or in the letter (or an aid in ascertaining the prescribed phrase or the prescribed manner of answering the phone or writing the letter) is, or has been, broadcast over the station in question.

### 311 DISSENTING VIEWS OF COMMISSIONER HENNOCK

I believe that the Proposed Rules should not be adopted. These rules purport to interpret for the benefit of broadcast licensees Section 1304 of the Criminal Code which prohibits, with criminal sanction, the broadcast of "any advertisement of or information concerning any lottery, gift, enterprise or similar scheme offering prizes dependent in whole or in part upon lot or chance."

The concept of "lottery" has a long legal history. This provision, or ones similar thereto, appear in the statutes of virtually every state, and have frequently been applied by both federal and state courts. It is quite evident from the report of the majority in this proceeding that the Commission's interpretation of the term "lottery" is novel in at least one respect. This is the first instance in which a scheme has been called a lottery when the sole consideration supporting it is nominal or other than the payment of something of value. Even in the "Bank Night" cases, e. g., *Commonwealth v. Lund*, 15 A. (2d) 839, although particular individuals were allowed to participate without the purchase of a ticket or the payment of any valuable consideration, such consideration was paid by the great mass of the participants. Our Proposed Rules would comprehend situations in which none of the participants risked anything of value.

I do not believe it proper for an administrative agency to broaden the interpretation of a criminal statute any further than has been done by the courts. If the so-called "giveaway" programs, at which these Rules are ostensibly directed are, in fact, in violation of Section 1304, I believe this should be determined by a court after proper evaluation in a particular case. Since the lottery prohibition which was formerly Section 316 of the Communications Act of 1934, as amended, has been deleted from the Act which sets forth the duties and powers of this agency, I feel that, without a specific mandate from Congress for us to curb the prevalence of this type of program, our action today is unwarranted. For this reason, I suggest that the matter be brought to the attention of the Congress and of the Department of Justice for any action which they may deem appropriate to have taken.

312 *Exhibit C to amended complaint*

NBC

YOU BET YOUR LIFE

April 4, 1951, 9:00-9:30 p. m.

313 MR. FENNERMAN. Ladies and gentlemen, the secret word tonight is hand, h-a-n-d.

MR. MARX. Really?

MR. FENNERMAN. You bet your life.

The more than 3,000 DeSoto-Plymouth dealers of America present Groucho Marx in *You Bet Your Life*, the comedy quiz series produced and transcribed from Hollywood, and here he is, the one, the only Groucho.

MR. MARX. That's me, Groucho Marx.

Well tonight we have got \$5,500 for one of our couples, George, more than we have ever given away before. I hope somebody takes it away from me. It has been keeping me awake nights.

Now, then, who's first to try for the \$5,500?

Mr. FENNERMAN. We have invited some old-time Western characters to the program tonight and just before we went on the air our studio audience selected Mr. Fred Noller and we invited an Indian to be his partner, Mr. Bill Wilkerson, and here they are. Gentlemen, meet Groucho Marx.

Mr. MARX. Welcome gentlemen, welcome from the DeSoto-Plymouth dealers. And if you say the secret word you will divide \$100. It's a common word, something you always have with you. Let's see, wild Westerner and an Indian. Mr. Fred Noller, you are the Westerner, I presume?

Mr. NOLLER. Yup.

Mr. MARX. Where are you from, Podner?

Mr. NOLLER. Arizona Territory, that is, Arizona before it became a state.

Mr. MARX. How long have you been out here?

314 Mr. NOLLER. I have been out here since right after the war.

Mr. MARX. Which war are you referring to?

Mr. NOLLER. The last one.

Mr. MARX. Bill Wilkerson, you are the Indian, eh?

Mr. WILKERSON. Yes, sir.

Mr. MARX. How?

Mr. WILKERSON. How? My father and mother were Indians.

Mr. MARX. Ugh. Where are you from, Bill?

Mr. WILKERSON. I was born in Indian territory.

Mr. MARX. You two weren't neighbors, were you?

Mr. WILKERSON. Not quite, but I was born in Indian territory which is now Oklahoma.

Mr. MARX. Isn't Bill Wilkerson a kind of odd name for an Indian?

Mr. WILKERSON. Well, yes, but we took that name from missionaries about 160 years ago that were from Boston.

Mr. MARX. Is that all you took from them?

Mr. WILKERSON. That's all we were able to take at that time.

Mr. MARX. Don't you have a tribal name?

Mr. WILKERSON. I have my own Indian name.

Mr. MARX. What is that?

Mr. WILKERSON. Okonstata.

Mr. MARX. I used to play it three-handed. How did you get that name?

Mr. WILKERSON. An old Indian lady by the name of Terrapin gave it to me.

315 Mr. MARX. Terrapin?

Mr. WILKERSON. Yes, like dry land turtle. She prophesied that I would talk and sing before many strange people.

Mr. MARX. You couldn't get a stranger crowd than this out here. Are you married, Bill?

Mr. WILKERSON. Yes, sir.

Mr. MARX. You are a brave all right. Do Indians have a regular marriage contract or just a kind of blanket contract?

Mr. WILKERSON. In the old days it was a blanket contract. Today we have to abide by the rules and regulations.

Mr. MARX. What tribe are you from, Bill?

Mr. WILKERSON. I am a Cherokee.

Mr. MARX. Did you know I am a Black Foot?

Mr. WILKERSON. You don't look like one.

Mr. MARX. I'm not a Black Foot Indian, I'm just a black foot, with the cheap socks I wear. I used to know an Indian who was a lawyer, a Sioux Indian. Do you know anyone like that?

Old timer, what sort of work do you do?

Mr. NOLLER. I work down at Nutz Berry Farm.

Mr. MARX. Nutz Berry Farm?

Mr. NOLLER. Yes.

Mr. MARX. What is it?

Mr. NOLLER. A berry farm and a fellow by the name of Nutz started it.

Mr. MARX. What's a berry farm?

Mr. NOLLER. It's a pretty good sized spread. He has three or four hundred acres there and he has big chicken dining rooms and a steakhouse where he serves a lot of people.

316 Mr. MARX. How many people do you feed out there?

Mr. NOLLER. Well, I reckon about the biggest time they had was last Father's Day there were about 11,000, a little over, out there for dinner.

Mr. MARX. On Father's Day you served 11,000 dinners?

Mr. NOLLER. That's right.

Mr. MARX. That's typical. 11,000 mothers decided to celebrate Father's Day by letting the old man take them all out to dinner.

Let us see how you work together as a team. Just one minute. You are going to play You Bet Your Life for a chance at \$5,500. First there is something of importance I want you to hear about.

Mr. FENNERMAN. When you drive the new 1951 DeSoto you will enjoy added comfort and pleasure thanks to DeSoto's famous Aeroflow shock absorbers, a longer wheelbase and a full cradle ride. Yes, no other car rides like a DeSoto. And DeSoto also give you a wonderful feeling of safety and security. Just suppose you need to stop and in a hurry. Well, DeSoto's big, new 12-inch



brakes will quickly bring you to a safe, smooth stop. No other car in America has larger brakes. And DeSoto's chair-high seats let you sit up comfortably with a full view of the road ahead. There's more visibility, too, with the new, wider, deeper windshield and rear window, and should a blow-out occur, DeSoto's safety rim wheels help keep the car under control.

Well, that, folks, should give you a pretty good idea of the new DeSoto's greater safety, and when you add to that its  
317 extra comfort, you will discover why DeSoto is your best buy for the years ahead. So visit your DeSoto-Plymouth dealer tomorrow and see this beautiful 1951 DeSoto for yourself.

Mr. MARX. Let's see if you will get the chance at the \$5,500. George, Mr. Fennerman, will you explain the rules to these old trappers over here.

Mr. FENNERMAN. You bet as much of your \$20 as you want on each of four questions. The couple that earns the most money gets a chance at the \$5,500 DeSoto-Plymouth question at the end of the show.

Mr. MARX. All right, here we go. Let's see how high you can build your \$20. You selected fighting presidents. Here's your first question. How much of the \$20 will you bet?

Mr. WILKERSON. Make it about \$18.

Mr. NOLLER. That's good. Just one thing. If we don't win, you won't be too disappointed, will you?

Mr. MARX. No, I won't, but I think you will. I want everybody to win on this show.

Mr. NOLLER. Thank you.

Mr. MARX. It's not my money. What was the name of the president who led the Union forces during the Civil War?

Mr. WILKERSON. U. S. Grant.

Mr. MARX. U. S. Grant is right.

Mr. FENNERMAN. You fellows are on your way. You have \$38.

Mr. MARX. You are going for \$5,500. How much of your \$38 will you bet on your second question?

Mr. NOLLER. \$35.50.

318 Mr. MARX. \$35.50. What was the name of the president who served with the 129th Field Artillery during the first World War?

Mr. WILKERSON. Truman.

Mr. MARX. Harry Truman is right.

If he's an Indian, I'm a monkey's uncle, and don't think that couldn't be true.

Mr. FENNERMAN. You have 30—70.

Mr. MARX. Get this man a mathematician here.

Mr. FENNERMAN. I had it for a minute.

Mr. MARX. Where do you live? I bet you don't know where you live.

Mr. FENNERMAN. Yes, I do.

Mr. MARX. Where?

Mr. FENNERMAN. 5300—you don't—you have here, it's right here, \$73.50.

Mr. MARX. All right. How much of this are you going to risk this time?

Mr. WILKERSON. \$73.

Mr. NOLLER. No, \$70.

Mr. WILKERSON. I hope we'll get enough for a hamburger out of this.

Mr. MARX. The chief says he hopes he gets enough for a hamburger out of this. What was the name of the president who was a major general in the Civil War, he was assassinated by a disappointed office seeker?

Mr. NOLLER. He ain't saying which side of the fence he was on.

Mr. MARX. I'm sorry. It was James Garfield. There were only three presidents assassinated. You should have known that.

Mr. FENNERMAN. You now have \$3.50.

Mr. MARX. See how quickly Fennerman figures that out.

Mr. NOLLER. Shoot it all.

Mr. MARX. Here's your last chance to beat the other couples. How much will you bet, everything?

Mr. NOLLER. Sure.

Mr. MARX. What was the name of the president who was the hero of the Battle of New Orleans? He was called Old Hickory.

Mr. NOLLER. Andrew Jackson.

Mr. MARX. Andrew Jackson is right.

Mr. FENNERMAN. Wait a minute, Fellows, we can't let you go with just \$7.

Mr. MARX. You can't even get a hamburger for \$7. We can't have anybody going away from here broke. I'll give you one more question and get it right and you will win \$10. No help from the audience. In what sport do you wear tennis shoes?

Mr. NOLLER. Tennis.

Mr. MARX. Tennis is right.

Mr. NOLLER. Thank you.

Mr. WILKERSON. Thank you.

Mr. MARX. Thank you, good luck from the DeSoto-Plymouth dealers.

Mr. FENNERMAN. We invited some people to the show tonight who give intelligence tests and just before we went on the air our studio audience selected Mrs. Jean Judson. Her partner is

320 a married man from the audience, Mr. William Share and here they are. Folks come in here and meet Groucho Marx.

Mr. MARX. Welcome to You Bet Your Life. Say the secret word and divide \$100 between you. It's a common word, something you always have with you. Let's see, we have an intelligence tester here. If I was smart, I'd leave by the back door and quietly.

Mrs. Jean Judson, you are the intelligence tester. Where are you from?

Mrs. JUDSON. I'm from all over, Groucho.

Mr. MARX. You're from all over Groucho? Where are you from, specifically, Jean?

Mrs. JUDSON. I was born in Chicago. Then I went to Kansas, then to Idaho, then to Minnesota.

Mr. MARX. What were you doing; were you selling vacuum cleaners? Why were you traipsing around the country?

Mrs. JUDSON. My father's job changed and then my mother's job changed and then I found my own.

Mr. MARX. Found your own mother and father?

Mrs. JUDSON. No.

Mr. MARX. That's kind of sad, a woman searching all over America for her parents. Where were they at the time? Were they with you when you were born?

Mrs. JUDSON. I think so.

Mr. MARX. That's handier. What's your home town, William?

Mr. SHARE. Louisville, Kentucky.

Mr. MARX. What sort of work do you do?

Mr. SHARE. When I was on the road I sold ladies' lingerie.

321 Mr. MARX. That's pleasant. Intimate. What are you doing now?

Mr. SHARE. I'm waiting for my orders to report to the Army; I have been drafted.

Mr. MARX. I don't know what to say about that, except that's not the ideal place to sell lingerie. You are married, too?

Mr. SHARE. Yes, I am.

Mr. MARX. You certainly don't look it. You look like you are enjoying yourself. Are you sure you are married?

Mr. SHARE. Five years.

Mr. MARX. Could you prove it; could you let me see your marriage license?

Mr. SHARE. I don't have those with me.

Mr. MARX. Slippery, aren't you? I bet you \$10 right now I can prove you're not married. Do you want to bet?

Mr. SHARE. I haven't got ten bucks.

Mr. MARX. Well, I lose. If you don't have ten bucks, you're married all right. Here's your dough.

Mr. SHARE. Thank you.

Mr. MARX. You ought to get acquainted with the Indian we had out here. He can lend you some money; he got a couple of bucks at home. If I keep on chattering, I will not only prove I'm a dope but also that I'm broke.

Let us talk about this intelligence testing. Who do you work for, Jean? I forgot I was talking to an intelligence tester. I beg your pardon. Whom do you work for? I have to be  
322 careful, somebody from the New Yorker might be listening. Who do you work for, Jean?

Mrs. JUDSON. For the Educational Testing Service.

Mr. MARX. What kind of racket is that; what do they do?

Mrs. JUDSON. We test the high school seniors who are applying for entrance into college.

Mr. MARX. Let me see you try it on Bill over here. Ask him some questions. Go ahead, Jean.

Mrs. JUDSON. Well, if it takes three men six days to finish a job, how many men can finish that job in twelve days?

Mr. SHARE. I would say four.

Mr. MARX. Why don't you. Jean, what would you say, would you say he is right?

Mrs. JUDSON. No. The right answer to that is a man and a half.

Mr. MARX. That may be the right answer, but where are you going to hire a man and a half. Of course, you could hire one, but I won't be out of work until summer.

Now, Jean, I don't think that was a fair question. Try another one, where the answer is a whole man. Go ahead, what's another of your test questions?

Mrs. JUDSON. Here's one for you, Groucho. If you see a train approaching very fast on a track—

Mr. MARX. That is a good place for it.

Mrs. JUDSON. If you see a piece of rail is missing from the track, what would you do?

Mr. MARX. I'd get off and take the American Airlines. Do I have a choice or what?

323 Mrs. JUDSON. You have a choice of three answers: Would you look for a piece of missing rail to fit in, would you call an ambulance or would you signal the engineer to stop the train.

Mr. MARX. Is the train going north or south?

Mrs. JUDSON. It doesn't matter.

Mr. MARX. It doesn't matter, huh?

Mrs. JUDSON. No.

Mr. MARX. It would to me, if I were on the train.

Okay, let's say I would call an ambulance, am I right?

Mrs. JUDSON. No; you should signal the engineer to stop the train.

Mr. MARX. That's not true. By the time I figured out the question the correct thing to do would be to call an ambulance.

Well, I have learned a lot about intelligence quotients. Is that what you call it?

Mrs. JUDSON. That's right.

Mr. MARX. Let us see if you two are smart enough to run your \$20 into more than our other couples. Then you can take away the \$5,500 from me. Now Mr. Fennerman, that is George, is off stage to remind our listeners how much the first couple won.

Mr. FENNERMAN. The western character and the Indian won \$7.

Mr. MARX. Here we go, let's see how high you can build your \$20. You selected famous hotels. Here is your first question, how much will you bet?

Mr. SHARE. \$18.

Mr. MARX. He is an undercover man; he used to sell lingerie.

324 In what city is the Palmer House Hotel?

Mrs. JUDSON. Chicago.

Mr. MARX. Chicago, Chicago.

Mr. FENNERMAN. You're on your way. You have \$38.

Mr. MARX. Remember, you're going for \$5,500 tonight. That's the most we ever had. How much of your \$38 are you going to bet this time?

Mr. SHARE. \$35?

Mrs. JUDSON. Yes.

Mr. SHARE. \$35.

Mr. MARX. How much?

Mr. SHARE. \$35.

Mr. MARX. In what city is the Mark Hopkins Hotel?

Mr. SHARE. Atlantic City.

Mr. MARX. No, I'm sorry, kids, it's San Francisco. You should have known that. It's a very famous hotel and you've been on the road all these years.

Mr. FENNERMAN. You have \$3 now.

Mr. MARX. That's a shame. Here's your third question. How much of the \$3 you going to bet?

Mrs. JUDSON. Bet it all.

Mr. MARX. In what city is the Town House Hotel?

Mrs. JUDSON. Boston.

Mr. MARX. Los Angeles. It's right down here on Wiltshire Boulevard.

Mr. FENNERMAN. They've gone broke, Groucho.

Mr. MARX. We can't let them go away broke. We'll have to give them another question. This is for \$10; if you get this  
325 right, I'll give you \$10. And please, no coaching. Think carefully, this is a toughie. Who is buried in Grant's Tomb?

Mr. SHARE. Grant.

Mr. MARX. General Grant is right. Thank you and good luck from the DeSoto-Plymouth dealers.

Mr. FENNERMAN. Groucho, we invited some beauty contest winners to the program tonight and just before we went on the air our studio audience selected Vera Miles. Her partner is a bachelor, Mr. Victor Desny.

Folks, come in here and welcome Groucho Marx.

Mr. MARX. Welcome for the DeSoto-Plymouth dealers. Say the secret word and you will divide \$100. It's a common word, something you always have with you.

A beauty contest winner, now you're talking. This calls for a little closer inspection. Your name is Vera Miles?

Mrs. MILES. That's right.

Mr. MARX. That's a very pretty name and you're a very pretty girl. Where are you from?

Mrs. MILES. I'm originally from Kansas.

Mr. MARX. From Kansas?

Mrs. MILES. Yes.

Mr. MARX. May I ask how old you are?

Mrs. MILES. Twenty.

Mr. MARX. I'm a man of very few words, Vera. How about joining me at a big party after the show? Would you like that?

Mrs. MILES. It sounds like a lot of fun.

Mr. MARX. How do you know it will be a lot of fun? You don't know who is going to be there. Do you want to know, Vera?

326 Mrs. MILES. Yes. Who is going to be there?

Mr. MARX. Just you and I. Does that still sound like fun, answer yes or no, Vera?

Mrs. MILES. No.

Mr. MARX. You don't have to answer quite so quickly. Couldn't you at least cogitate about this thing a little bit? Why wouldn't you like to go out with me after the show?

Mrs. MILES. Well, I'm married.

Mr. MARX. For a man of few words I certainly can talk myself out on a limb. Are you married?

Mrs. MILES. Yes.

Mr. MARX. Mr. Victor Desny, you're still here, are you?

Mr. DESNY. Yes.

Mr. MARX. Pardon me for ignoring you, but it's the best I could do at the moment. Where were you born, Mr. Desny?

Mr. DESNY. I was born in Montenegro.

Mr. MARX. How long since you were in Montenegro?

Mr. DESNY. I left when I was just a baby. I went to Albania, the home of my parents.

Mr. MARX. I must be slipping. I'm standing next to a beauty contest winner and what am I doing, I'm talking about Yugoslavia and Albania.

What are some of the beauty titles you held?

Mrs. MILES. I was first Miss Chamber of Commerce, then Miss Wichita, then Miss Kansas, then Miss Texas Grapefruit.

Mr. MARX. Miss Texas Grapefruit?

327 Mrs. MILES. Yes.

Mr. MARX. Was your father a squirt?

Mrs. MILES. And recently I have been chosen Miss Nu-Made Margarine, and I had the honor to represent Kansas in the Miss America pageant.

Mr. MARX. Tell us something about the Miss America contest. How long does it take to select a Miss America?

Mrs. MILES. It takes a week so that the judges can completely get acquainted with the girls.

Mr. MARX. Those fools who go out for the Supreme Court, eh.

Victor, old boy, I'm sorry I'm neglecting you. It's not that I'm forgetting you exactly, it's just that I'm not thinking of you, that's all. Victor, suppose Vera wasn't married and you saw her walking along the street in Albania, how would you approach her and make a date with her?

Mr. DESNY. I wouldn't do that.

Mr. MARX. You wouldn't?

Mr. DESNY. No.

Mr. MARX. You can go back behind the Iron Curtain.

Mr. DESNY. It's not allowed for a man in Albania to talk to a girl in the street. If it's absolutely necessary, like asking for a direction, he has to walk across the street and then holler at her.

Mr. MARX. He has to cross the street and holler at her if he wants a direction?

Mr. DESNY. That's right.

328 Mr. MARX. Suppose that isn't the question he wants to ask? How is she going to be able to reach him and slap his face, unless she has the arm of a gorilla? In that case he wouldn't want her.

Do they have bathing beauty contests in Albania?

Mr. DESNY. No.

Mr. MARX. Don't they bathe in Alabania?



Mr. DESNY. Yes, they do. But the women aren't allowed to expose their bodies in public. If they want to go to a beach, they have to go to a separate beach where the men can't see them.

Mr. MARX. What's the sense of bathing then? Do they wear bathing suits on the women's beaches?

Mr. DESNY. Yes, they do.

Mr. MARX. What kind, French bathing suits?

Mr. DESNY. Oh, no. They're much longer and they cover much more.

Mr. MARX. How do you know? I thought men couldn't see them?

Vickie, you would fit right in down at Muscle Beach in Santa Monica. Vickie, you've learned something of American women tonight. Do you think you would prefer to marry an Albanian or an American woman? Now think carefully now.

Mr. DESNY. Well, Mr. Marx, this is very difficult to answer. The American women have charm, personality and are very good companions, but the Albanian women are more humble and devoted to their husbands, especially they have lovely hands.

329 Mr. MARX. Vickie, you said "hands" and you and Vera are going to split \$100 between you. There is \$50 for you and \$50 for you, Vera.

What were you saying about the girls over there? You say they work harder and are more devoted to their husbands?

Mr. DESNY. Yes.

Mr. MARX. What I would do if I were you, I'd marry an American woman, and if you want devotion, you get yourself a St. Bernard dog.

You make a very attractive couple and it has been a pleasure talking to you. I'm sorry you're married. Vera. But that happens to all men. You're going to play You Bet Your Life, and if you beat our other two couples, you'll get your chance at the \$5,500 DeSoto-Plymouth question. I can't tell you how much the other couples won, but George is off stage to remind our listeners.

Mr. FENNERMAN. The western character and the Indian are still leading with \$7.

Mr. MARX. Here we go, let's see how high you can build your \$20. You selected songs by Groucho Marx; is that right?

Mrs. MILES. That's right. We're betting 19.

Mr. MARX. You're betting \$19?

Mrs. MILES. Yes.

Mr. MARX. Once I was happy but now I'm forlorn, like an old coat that is tattered and torn. I'm left in this wide world to fret and to mourn, betrayed by a girl in her teens.

330 Oh, I'm sorry, "The Man On The Flying Trapeze." I know I sing very badly, but I thought you would recognize that.

Mr. FENNERMAN. You now have \$1.

Mr. MARX. Okay (here's the second one. How much of the dollar are you going to bet?

Mrs. MILES. The \$1.

Mr. MARX. Boys and girls together, we could sing and waltz, while Chico played the organ, dah, dah, dah, dah.

Mrs. MILES. On the Streets of New York.

Mr. MARX. That's close enough, On the Sidewalks of New York.

Mr. FENNERMAN. Now you're climbing a little bit. You have \$2 now.

Mr. MARX. You are away up there, Vera; you're up to \$2. How much you going to bet on this one.

Mrs. MILES. All of it.

Mr. MARX. All of it?

Mrs. MILES. Yes.

Mr. MARX. Some think that the world is made for fun and frolic, and so do I, and so do I: Some think it's going to be melancholic—

Mrs. MILES. Funiculi Funicula.

Mr. MARX. Funiculi and Funicula, that's right.

Mr. FENNERMAN. Now you have \$4.

Mr. MARX. You have \$4. Your last chance to beat the other couples. How much of the \$4 you going to bet?

Mrs. MILES. All of it.

331 Mr. MARX. You're going to bet all of it. That was a shame, that one question.

Here's your last chance to beat the other couples. You're going to bet \$4.

(Sings.)

Mrs. MILES. The Bowery.

Mr. MARX. The Bowery is right.

Mr. FENNERMAN. You did come through, because your \$8 total means you get the chance at the DeSoto-Plymouth \$5,500 question.

Mr. MARX. Well, I'll ask them the big question in just one minute.

Mr. FENNERMAN. Here it is the first week in April and time to start thinking about getting your car ready for the warmer spring and summer months ahead. To put it in tip-top shape, to add more life and real pep to the engine mile after mile after mile, bring your car to a DeSoto-Plymouth dealer for a spring tune-up. Here you get treated fairly and squarely and you get expert serv-

ice, for the mechanics at a DeSoto-Plymouth dealer are trained in factory methods and they use factory designed and approved equipment. They'll inspect your car thoroughly; give your engine a complete tune-up and check the electrical system and they'll see to it that the radiator is drained and flushed, the chassis is inspected and lubricated and do the countless other jobs that will assure you of thousands of miles of trouble-free driving.

So no matter what kind of car you own, stop in for that really thorough spring tune-up at the sign of a DeSoto-Plymouth  
332 dealer. Any of the more than 3,000 DeSoto-Plymouth dealers will be happy to serve you promptly, efficiently and at a fair price.

All right, Groucho, and here is the beauty contest winner and the bachelor. Will you come over here, please.

The winning couple are ready for the DeSoto-Plymouth \$5,500 question.

Mr. MARX. For \$5,500 I will give you 15 seconds to decide on a single answer between you. Think carefully and, of course, no help from the audience. Here it is. One of our greatest men isn't as well known as he should be. See if you can tell me who he is for \$5,500. He was our first chief justice of the Supreme Court. Who was it? What is the answer you two have decided upon?

Mrs. MILES. Johnson.

Mr. MARX. No, it is John Jay, J-a-y.

Mrs. MILES. Oh, I knew it.

Mr. MARX. I'm terribly sorry. That means the big question next week will be worth \$6,000. Well, you lost the big money but you won \$8 in the quiz, congratulations—\$100, too. You got \$108, that's not too bad.

Congratulations and thanks to both of you and to all of our contestants on the show tonight.

Mrs. MILES. Thank you.

Mr. FENNERMAN. Be sure to tune in again next Tuesday night at this time for the Groucho Marx Show when the big question will be worth \$6,000. Don't miss Groucho's television show, also presented by the Desoto-Plymouth dealers of America.

333 And America, all dealers who sell DeSotos also sell Plymouth. Two great cars, both products of the Chrysler Corporation.

Mr. MARX. When you drive in, tell them Groucho sent you. Good night folks.

Just be sure to visit your DeSoto-Plymouth dealer.

Mr. FENNERMAN. Folks, here's a reminder from the National Safety Council: Don't stick your neck out in traffic.

You Bet Your Life!

334 *Exhibit D to amended complaint*

NBC

\$64 QUESTION

April 1, 1951, 10-10:30 p. m.

335 **KEN ROBERTS.** Get set, America, here comes the \$64 Question. Yes, it is that take it or leave it game brought to you tonight and every Sunday night over these same NBC stations, the game America has played and loved for years.

And now here is the fellow who has asked more \$64 questions than any man alive, your paymaster of ceremonies, Phil Baker.

**Phil BAKER.** Oh, no.

**Ken ROBERTS.** Really—

**Phil BAKER.** Oh, no—

**Ken ROBERTS.** Phil Baker.

**Phil BAKER.** Good evening, thank you very much. Good evening, ladies and gentlemen, and welcome once again to the \$64 question—yes, this is Phil Baker again welcoming you to the \$64 question.

Here it is the 1st of April and spring is here, and I don't know how to tell you this, but every spring my wife and I get such silly notions. We get the urge to go to Coney Island and ride through the Tunnel of Love. Of course, we ride through the Tunnel of Love other times, too, but in the spring we try to get seats in the same boat. Yes, we do.

Well, spring—spring even affects little children. I saw two little boys in the park today. One little boy said, "Hello, my name is Billie. I am five." The other one said, "My name is Jimmy and I don't know whether I am four or five."

Billie said, "Well, when you see a little girl walk down to the street, does it give you kind of a funny feeling inside?"

Jimmy said, "Yes."

336 **Billie said, "You are five."**

Of course, spring does something to a man. I feel all keyed up. What an exciting day I had today. Two sets of tennis, 18 holes of golf, a chukker of polo. Yes, sir, those news reels are sure exciting. I knew I was going to louse that gag up tonight.

Now that the first week of spring has seen New York welcoming a robin from Florida, a bluebird from Georgia, and an Auriol from France, let us welcome from our studio audience Mr. Cole, who is from New York City.

How do you do, Mr. Cole.

Mr. COLE. How do you do.

Mr. BAKER. How are you today—today on this beautiful spring day?

Mr. COLE. Fine, Phil. How's yourself?

Mr. BAKER. Well, I'm pretty good, sir. You're a native of New York, are you?

Mr. COLE. That's right.

Mr. BAKER. 260 Riverside Drive?

Mr. COLE. That's right.

Mr. BAKER. I used to live up that way.

Mr. COLE. Yes, I know, years ago when I was a boy—that goes back to Billie Sunday's time—I used to see you in the Audubon Theater once in a while.

Mr. BAKER. That's right. That is way up in the Heights. Do you know some people around there?

Mr. COLE. Well, a few, not very many.

Mr. BAKER. Do you have any relatives up there?

Mr. COLE. I did have, but I don't have any more.

337 Mr. BAKER. It says here that you are a painter.

Mr. COLE. That's right.

Mr. BAKER. Painter, is that all you do for a living?

Mr. COLE. Well, mainly.

Mr. BAKER. That is an avocation or a vocation?

Mr. COLE. It's both.

Mr. BAKER. House painter or portraits?

Mr. COLE. Fresco work and art work.

Mr. BAKER. Do you have any hobbies?

Mr. COLE. Taxidermy once in a while.

Mr. BAKER. You're what?

Mr. COLE. Taxidermy once in a while.

Mr. BAKER. Taxi driver?

Mr. COLE. Taxidermist.

Mr. BAKER. Taxidermist—you stuff things?

Mr. COLE. That's right.

Mr. BAKER. What did you stuff last?

Mr. COLE. Mammals and groups of animals and butterfly mountings.

Mr. BAKER. Mammals?

Mr. COLE. Entomology.

Mr. BAKER. Did you ever stuff a taxi?

Mr. COLE. Yes, with a crowd.

Mr. BAKER. I have a fat aunt who stuffs a taxi all right.

Mr. COLE. I know what you mean.

Mr. BAKER. Before we get too dull here, let us go on with the show. What have you chosen, please?

Mr. COLE. No. 6.

338 Mr. BAKER. No. 6. Okay, here we go with No. 6. That is a category on London. These questions are all about London. For a dollar, according to the nursery rhyme, what animal went to London to visit a queen?

Mr. COLE. A cat.

Mr. BAKER. The pussy cat is good for a buck. All right, let us have a hand for the gentleman.

Here we go for \$2. Who lives at No. 10 Downing Street?

Mr. COLE. The Prime Minister.

Mr. BAKER. The Prime Minister, good for \$2. Do you want to try for \$4?

Mr. COLE. Yes.

Mr. BAKER. From what London abbey was the Stone of Scone stolen this year?

Mr. COLE. Westminster Abbey.

Mr. BAKER. Westminster Abbey. The suspects in the case, as you know, are Scottish nationalists.

Mr. COLE. That's right.

Mr. BAKER. They have had a long feud with the British.

Mr. COLE. That's right.

Mr. BAKER. Taking the Stone of Scone is only the beginning.

Mr. COLE. That's right.

Mr. BAKER. The next on the list is the Rock of Gibraltar.

For \$4—or for \$8—are you going in for \$8?

Mr. COLE. Yes.

339 Mr. BAKER. Whose headquarters are Scotland Yard?

Mr. COLE. The police.

Mr. BAKER. The police, the London metropolitan police.

Okay, shall we try for 16, sir?

Mr. COLE. Yes.

Mr. BAKER. Here is the question: What section of London corresponds to Chinatown in New York?

Mr. COLE. Soho or Piccadilly Circus.

Mr. BAKER. Where else? No help.

Mr. COLE. Limehouse.

Mr. BAKER. Limehouse is better, fine.

Have you ever been to London?

Mr. COLE. No, I have never been there. I have been there in story books.

Mr. BAKER. A very exciting section of London. The Chinese Limeys, the Limehouse Chinese are really something. I heard one tell a customer, "Me velly solly, but you lose tickey—no tickey, no washee, and that is precisely the way the bally situation stands, really." That is how he expressed himself.

Here we go for 32: Which one of these royal residences is not in London, Clarence House, Balmoral Castle, Marlboro House?

Mr. COLE. Balmoral Castle.

Mr. BAKER. Balmoral Castle is in Scotland. Good for you, sir. All right, will you try for \$64?

Mr. COLE. Yes.

340 Mr. BAKER. The \$64 question: What river is spanned by London Bridge?

Mr. COLE. The Thames.

Mr. BAKER. The Thames is good for \$64.

Our next guest is Mrs. Lillian Bell of Brooklyn. Yey Brooklyn. How are you, Mrs. Bell?

Mrs. BELL. I am fine; and how are you, Mr. Baker?

Mr. BAKER. I'm fine. Have you been listening to this show?

Mrs. BELL. Yes, I have, every Sunday night.

Mr. BAKER. Do you enjoy it?

Mrs. BELL. Yes, I have.

Mr. BAKER. Have you ever been a contestant on a quiz show before?

Mrs. BELL. No.

Mr. BAKER. Are you a housewife?

Mrs. BELL. That's right.

Mr. BAKER. Speak right up as though the microphone were your husband.

Mrs. BELL. I just happen to be very nervous.

Mr. BAKER. The microphone won't talk back, either. How long have you been a housewife?

Mrs. BELL. Eleven years.

Mr. BAKER. How about giving the ladies listening the benefit of your experience? Suppose you tell us the best way to handle a husband?

Mrs. BELL. You don't, you just let him go as he is.

Mr. BAKER. Where were you when I was looking for a wife?

341 All right, Mrs. Bell, what questions have you chosen, please?

Mrs. BELL. I have chosen 1.

Mr. BAKER. That is accordion and orchestra.

Popular music, strong, silent stuff. Each of these song titles consists of just one word. How many do you know for a dollar. Let us try it.

[Music.]

Mrs. BELL. "Who."

Mr. BAKER. Huh?

Mrs. BELL. "Who."

Mr. BAKER. "Who" is correct for a buck.

All right, shall we go for \$2?



Mrs. BELL. Yes, we shall.

Mr. BAKER. I'm going to play the accordion for you.

Mrs. BELL. It's a pleasure.

Mr. BAKER. You'll be sorry, you'll see.

[Music.]

Mr. BAKER. What's the name of that?

Mrs. BELL. I wouldn't know.

Mr. BAKER. Nothing.

[Music.]

Mrs. BELL. "Summer Time."

Mr. BAKER. I can't hear you.

Mrs. BELL. I'll let you play it.

Mr. BAKER. Thank you.

Mrs. BELL. "Summer Time."

Mr. BAKER. I heard you now. Okay for \$2. Let us go for \$4?

342 Mrs. BELL. Yes.

[Music.]

Mr. BAKER. One word.

Mrs. BELL. "Always."

Mr. BAKER. I can't hear you. What is the use of my practicing all week. That was the biggest hit 25 years ago. Do you know that?

Mrs. BELL. No.

Mr. BAKER. Just for fun, see if you can tell me what song was the biggest hit of last year. Well, it was "Good Night Irene." Remember?

Mrs. BELL. Yes.

Mr. BAKER. "Good Night Irene" was such a big hit they are writing a sequel to it. It's called "Nobody Is Singing Good Night Irene, Since Irene Started Taking Ovaltine."

That's not funny, but Ovaltine could be a sponsor, you know. Okay, here we go for \$8. Let's try it.

[Music.]

Where are you going from here?

Mrs. BELL. Home.

Mr. BAKER. Home is the number. Right for \$8. Thank you.

[Music.]

Mrs. BELL. "If." "If."

Mr. BAKER. Who?

Mrs. BELL. "If."

Mr. BAKER. "If" is right. That is correct.

Okay, you want to try for 32?

343 Mrs. BELL. Yes.

Mr. BAKER. Here is the song.

[Music.]

Mrs. BELL. "Maybe."

Mr. BAKER. No. What is the title? No help. "Maybe I'm Right and Maybe I'm Wrong, and Maybe I Shouldn't Be Singing This song," but here is the title.

Mrs. BELL. "Nevertheless I'm In Love With You."

Mr. BAKER. Did you hear the lady?

Mrs. BELL. No, I honestly didn't.

Mr. BAKER. Are you sure about that?

Mrs. BELL. Yes.

Mr. BAKER. I'm going to believe you. Okay, fine, that's 32 bucks. Let us try the \$64 song.

[Music.]

Mrs. BELL. "Dance, Ballerina, Dance."

Mr. BAKER. "Ballerina," that gives you \$64 and congratulations.

All right, sir, I'll be back with more contestants in a moment, but first Ken Roberts has an announcement he would like to make.

Mr. ROBERTS. This is a story about two men who worked side by side in the same business, yet one has money put aside to build a home one day while the other hasn't a dime. How come? Today he is enjoying security and he is proud to know he's aided his country's defense. If he can do it, so can you. Put twice as

much in defense bonds now. Save money before you spend  
344 it. With the automatic purchase of bonds you will pile up savings that may buy you a home of your own, a college education for the kids and old age without financial worries. Join the part payment payroll savings plan where you work or, if you are self-employed, use the bond-a-month plan at your bank.

Remember, defense is your job. Buy United States defense bonds.

Mr. BAKER. This is Phil Baker following through with the \$64 Question, and here is our next guest, Private First Class Allen Turnbull of the United States Army. How about a round of applause for the fellow?

How are you tonight, sir?

Pfc. TURNBULL. I am fine, Mr. Baker, fine.

Mr. BAKER. I'm very happy to see you.

Pfc. TURNBULL. Very glad to be here.

Mr. BAKER. Gee, you're a good looking guy.

Pfc. TURNBULL. Thanks.

Mr. BAKER. How old are you?

Pfc. TURNBULL. 23.

Mr. BAKER. How long you been in?

Pfc. TURNBULL. Just about five months, sir.

Mr. BAKER. Would you be incriminating yourself by telling me what you've been doing all day?

Pfc. TURNBULL. Well, I don't think so. Seeing New York for about the last time.

Mr. BAKER. Is it expensive roaming about town?

Pfc. TURNBULL. Very expensive.

Mr. BAKER. Whatever you spend, I am going to give you a chance to get it back. You going to quit at \$8 or stay in there for the full \$64.

345 Pfc. TURNBULL. I'll stay all the way.

Mr. BAKER. You can't tell, I might decide to go right on past \$64. It's amazing the way money accumulates when you keep on doubling it. If you would answer 10 questions, you would own this station. I better not risk it, though. You would have no trouble getting me to give it to you, but your trouble would be getting Milton Berle to give it up. He was just signed for 30 years. He just signed a contract with NBC for 30 years. Can't you just hear him now: "This is Uncle Miltie. Would you care to help me across the street?"

Pfc. TURNBULL. I would hate to be in the Army that long.

Mr. BAKER. Well, I would hate for you to be in the Army that long. I hope we will certainly have peace, and very soon.

Do you like this city?

Pfc. TURNBULL. Yes, very much.

Mr. BAKER. I was very happy to get back to New York. I offered to entertain the United Nations Security Council. They turned me down. They said everything was going along fine, they didn't want people to start walking out all over again. I don't know what happens to these jokes lately. Is there a cat walking around the studio here?

All right, Private First Class Allen Turnbull of Milburn, New Jersey, what have you chosen?

Pfc. TURNBULL. Category No. 8, name the country.

Mr. BAKER. Category No. 8, name the country. All right. You will have to tell me in what country you would be if you landed at each of the following seaports and went by car  
346 to the following points of interest.

For a dollar, if you landed at Cork and went by car to Limerick?

Pfc. TURNBULL. I would be in Ireland.

Mr. BAKER. Ireland is right; fine.

For \$2, if you landed at Bremerhaven and went by car to Heidelberg?

Pfc. TURNBULL. I would be in Germany.

Mr. BAKER. Germany is good; fine. You are better at geography than another contestant I once had. I asked him, "Where are the Alps?" He said, "I don't know. If you put things where they belong, you would be able to find them."

Here we go for \$4. In what country would you be if you landed at Amsterdam and went by car to The Hague?

Pfc. TURNBULL. I would be in Holland.

Mr. BAKER. Holland is good for \$4. What do you want to do now?

Pfc. TURNBULL. I will go on for \$8.

Mr. BAKER. Eight bucks. In what country would you be if you landed at Barcelona and went by car to Granada?

Pfc. TURNBULL. Spain.

Mr. BAKER. Spain is good. Do you want to try for \$16?

Pfc. TURNBULL. Yes, I certainly do.

Mr. BAKER. Tell me what country you would be in if you landed at Halifax and went by car to Ottawa?

Pfc. TURNBULL. Canada.

Mr. BAKER. Canada is good for \$16.

347 All right, in what country would you be if you landed at Capetown and went by car to Mafeking?

Pfc. TURNBULL. In the Union of South Africa.

Mr. BAKER. South Africa is good for 32 bucks.

If you landed at Norfolk and went by car to Williamsburg?

Pfc. TURNBULL. I would be in the United States.

Mr. BAKER. United States—gives you \$64 and congratulations.

Stand by. All right. Here is our next guest coming to the microphone. Mrs. Ada Kravitz of Ridgewood, Long Island. How do you do, Mrs. Kravitz?

Mrs. KRAVITZ. How do you do, Mr. Baker?

Mr. BAKER. Aren't you warm with that fur coat on?

Mrs. KRAVITZ. Kind of warm.

Mr. BAKER. Take it off.

Ken, would you help the lady off with her coat?

Mr. ROBERTS. Gladly.

Mr. BAKER. What kind of coat is that?

Mrs. KRAVITZ. Persian lamb.

Mr. BAKER. Who bought it for you, hubby?

Mrs. KRAVITZ. Thank God, yes, he did.

Mr. BAKER. Just got my wife a brand new coat, unworn baby stool pigeon she is wearing now.

Mrs. KRAVITZ. Is that a fur?

Mr. BAKER. That is a fur, yes, from fur, who knows. I can't spend all my money on mink every year.

Tell me, Mrs. Kravitz, it says—you do something for a living, what is it—what do you do?

348 Mrs. KRAVITZ. Credit checker.

Mr. BAKER. I will see you later. Credit checker?

Mrs. KRAVITZ. Yes.

Mr. BAKER. Ken Roberts is leaving. Frank Stanton is leaving. Everybody is walking out.

Will you tell us about any funny incident that you can tell us about credit checking?

Mrs. KRAVITZ. Oh, yes.

Mr. BAKER. Tell us one, will you please?

Mrs. KRAVITZ. Someone came to buy something and they put up a big front.

Mr. BAKER. Yes.

Mrs. KRAVITZ. When we tried to collect, there was no front. We checked him from his automobile license, we checked him from his house and home and wherever he was—he lived there, but Annie don't live there any more. Finally, we got him. Yes, he was living in a trailer.

Mr. BAKER. I have a cousin living in a trailer for years. Go ahead.

Mrs. KRAVITZ. When he lives like that, he hasn't got much.

Mr. BAKER. I see.

Mrs. KRAVITZ. Period.

Mr. BAKER. So what happened?

Mrs. KRAVITZ. We were out \$75.

Mr. BAKER. You mean you didn't take the trailer?

Mrs. KRAVITZ. But next year he came back again and I spotted the guy. He didn't get very far the next time, believe me. He was before the judge before he knew it.

349 Mr. BAKER. Is that a fact. I think I saw him on the Kefauver Committee.

All right, Mrs. Kravitz, what have you chosen, please?

Mrs. KRAVITZ. I hope I will do good on No. 2.

Mr. BAKER. No. 2, okay. What is No. 2. That is American history. This is without credit. In each of these questions I will list three people or three things. One of them does not belong. You name the one.

For example, if I said which one of these battles was not fought during the American Revolution, Gettysburg, Bunker Hill, Yorktown, you would say Gettysburg.

Mrs. KRAVITZ. Gettysburg.

Mr. BAKER. Right.

Which one of these men was not a war president, Abraham Lincoln, Grover Cleveland, Woodrow Wilson?

No help, please.

Mrs. KRAVITZ. Grover Cleveland.

Mr. BAKER. No help, please. Thank you very much.

You have a dollar. Here we go for 2. Which one of these explorers was not a native of Spain, Pizzaro, Columbus, Cortez? You will have to speak up.

Mrs. KRAVITZ. Pizzaro.

Mr. BAKER. I'm sorry.

Mrs. KRAVITZ. Cortez.

Mr. BAKER. I'm sorry, you're wrong on both counts. It's Columbus, born in Genoa, Italy. I'm sorry. Stand by.

All right, here is our next guest at the microphone, Mr. Roy Milton. How do you do, Mr. Milton?

Mr. MILTON. Very good, thank you.

350 Mr. BAKER. Step a little closer to the microphone, please.

Senator Tobey would like to speak to you for just a moment. Mr. Milton, it says you're from—where is this, St. John?

Mr. MILTON. St. John, New Brunswick, Canada.

Mr. BAKER. Canada?

Mr. MILTON. Yes.

Mr. BAKER. What are you doing in our fair city?

Mr. MILTON. I'm just down here on a holiday.

Mr. BAKER. On a holiday?

Mr. MILTON. Yes.

Mr. BAKER. How did you come down—by plane?

Mr. MILTON. No, by car.

Mr. BAKER. By car. Your own car?

Mr. MILTON. No, a gentleman I'm with.

Mr. BAKER. Oh, I see. What do you do for a living?

Mr. MILTON. I'm a bus driver.

Mr. BAKER. A bus driver. You didn't drive down in the bus, did you?

Mr. MILTON. No, sir.

Mr. BAKER. Huh?

Mr. MILTON. No, sir.

Mr. BAKER. You remember that fellow who drove to New York from Florida?

Mr. MILTON. Yes.

Mr. BAKER. Did you ever have an inclination to do that?

Mr. MILTON. No. Once I get out of a bus I want to stay out of it.

351 Mr. BAKER. You don't want a busman's holiday, in other words?

Mr. MILTON. That's right.

Mr. BAKER. What have you seen in town; what did you do?

Mr. MILTON. I better not say, the wife may be listening in on the program.

Mr. BAKER. I see what you mean. Where is the Mrs., up home?

Mr. MILTON. I hope.

Mr. BAKER. Do you listen to it up home?

Mr. MILTON. Yes.

Mr. BAKER. Do we have a little following up there?

Mr. MILTON. Oh, yes.

Mr. BAKER. People do listen to the \$64 Question?

Mr. MILTON. Yes.

Mr. BAKER. What is the pound—what is the rate of exchange between the States and Canada?

Mr. MILTON. Buying in Canada, buying American money, when I bought it, it was 53½ cents on the dollar.

Mr. BAKER. 53½ cents on the dollar?

Mr. MILTON. That's right.

Mr. BAKER. I don't understand that. Do you mean our dollar is just worth 53½ cents up there? We'll sever relationship immediately, old boy.

Mr. MILTON. In other words, I mean for one of your dollars I have to pay \$1.05¾.

Mr. BAKER. That is different. Welcome to Take It or Leave It. That is fine.

352 All right, sir, here we go. What is the category you have chosen, please?

Mr. MILTON. I've tried No. 17.

Mr. BAKER. No. 17. Okay, here we go with No. 17: world statesmen, first names. What is the first name of each of these living statesmen for \$1: Eisenhower of the United States, what is the first name?

Mr. MILTON. Ike.

Mr. BAKER. That's sort of his nickname. I will give you that. It's Dwight, you know.

Mr. MILTON. Yes.

Mr. BAKER. Okay. First names for \$2, Auriol of France?

He is visiting with us now. The papers have been full of him, full of the facts that he is in town and he went to Washington.

It gets a little warm up here, doesn't it, son. Driving a bus you have to have pretty good eyesight, don't you? Let's us see if you've got 20/20 vision. Can you see this. If you saw a red light or a green light—

Mr. MILTON. Vincent.

Mr. BAKER. Who told you?

Mr. MILTON. You were a great help.

Mr. BAKER. All right, here we go for \$4. What is his first name, Romulo of the Philippines—Romulo of the Philippines? [Pause]—You don't know? I'm terribly sorry. He's a great statesman. Carlos Romulo.

Better luck next time.

353 All right, here's our next contestant.

Frank, I'll get it right one night. Keep talking in you know.



Mrs. Grace Brown, how do you do?

Mrs. BROWN. How do you do?

Mr. BAKER. I'm very happy to have you with us tonight. Will you step a little closer, please. What is that pin you're wearing? Is that an Eastern Star?

Mrs. BROWN. No, that is a veteran's pin from the Metropolitan Life Insurance Company.

Mr. BAKER. A veteran's pin. What does it signify actually; why were you given this honor?

Mrs. BROWN. Because I worked there for 21 years.

Mr. BAKER. You mean you are a veteran of the Metropolitan Life Insurance Company? You sell life insurance?

Mrs. BROWN. No. I worked in the home office.

Mr. BAKER. Uh huh.

Mrs. BROWN. I am retired from there now. But I did work there for—

Mr. BAKER. Twenty or so years?

Mrs. BROWN. Yes.

Mr. BAKER. And you are insured by Prudential, I suppose?

Mrs. BROWN. Oh, yes, and the Metropolitan, too.

Mr. BAKER. And the Metropolitan, too?

Mrs. BROWN. Yes.

Mr. BAKER. It says you are a dietician.

Mrs. BROWN. They serve lunches to the employees, you know, 14,000 employees.

354 Mr. BAKER. 14,000 employees.

Mrs. BROWN. And these are served in about 16 different units, each one is a separate restaurant. And I was manager or the head—it corresponded to a manager of a restaurant outside, only all the employees eat there.

Mr. BAKER. You sort of framed the menu, as it were?

Mrs. BROWN. Well, we had some part of it. Of course, they had a head dietician and they have a commissar.

Mr. BAKER. What about this guy Hauser, do you know anything about him, Dr. Hauser? Do you like that blackstrap molasses stuff that he goes for?

Mrs. BROWN. I can't go that, I've tried some of his other stuff, but I can't go it.

Mr. BAKER. I can't either. What about yogurt, is that good for you?

Mrs. BROWN. That's very good for you.

Mr. BAKER. You haven't got some yogurt with you in your purse?

Mrs. BROWN. No. But they serve those things, of course.

Mr. BAKER. Why is yogurt so beneficial? What are the vitamins? Is that goat milk?

Mrs. BROWN. No, it's like buttermilk. A good deal like it.

Mr. BAKER. You recommend it, do you?

Mrs. BROWN. For some things. I can't take it. I don't care for it particularly but I can't take it.

Mr. BAKER. I see.

Mrs. BROWN. I really think it's beneficial.

355 Mr. BAKER. You really do?

Mrs. BROWN. Yes.

Mr. BAKER. Then I shall try it.

All right, here we go. What have you chosen, please?

Mrs. BROWN. I was going to take No. 2.

Mr. BAKER. I'm sorry.

Mrs. BROWN. I'll take No. 12, I think.

Mr. BAKER. No. 12. Okay, here we are with No. 12. Presidents' earlier careers. That is a category about what some of our Presidents did before they moved into the White House.

For a dollar, what President was once a haberdasher?

Mrs. BROWN. Truman.

Mr. BAKER. Truman is good. Okay, fine.

Our President has a very tough job, hasn't he?

Mrs. BROWN. He has.

Mr. BAKER. He certainly has. Whenever I'm tempted to criticize President Truman I remember a sign I saw in a saloon out west. It said "Don't throw rocks at the piano player. He's doing the best he can."

All right. Thank you, Democrats.

Here we go for \$2. What President was once a rail splitter?

Mrs. BROWN. Abraham Lincoln.

Mr. BAKER. Abraham Lincoln, that's good. You must do a lot of reading. Do you?

Mrs. BROWN. I used to be a school teacher, too.

Mr. BAKER. Do you ever sit around at night with your nose in a book?

356 Mrs. BROWN. Yes, I used—

Mr. BAKER. Painful, isn't it?

Here we go for \$4. What President was once a president of Princeton?

Mrs. BROWN. Wilson.

Mr. BAKER. Woodrow Wilson; good for you.

All right, for \$8. What President was once a New York police commissioner? I'm going to give you a little hint. He originated the slogan, "Speak slowly and carry a big stick."

Mrs. BROWN. Teddy Roosevelt.

Mr. BAKER. Teddy Roosevelt, that's good. "Speak softly and carry a big stick." Since then no New York policeman has ever

spoken harshly to anyone. And that, kiddies, concludes Uncle Phil Baker's fairy tale for tonight.

For 16, what President was once governor of Massachusetts?

Mrs. BROWN. Coolidge.

Mr. BAKER. Calvin Coolidge, that's good. You can stop, take 16, or try for 32. What do you think? Should the lady try for \$32?

All right, what President was once a tailor?

Mrs. BROWN. Andrew Johnson—Jackson.

Mr. BAKER. Did you know that?

Mrs. BROWN. Yes.

Mr. BAKER. We will try for \$64?

Mrs. BROWN. Yes.

Mr. BAKER. The \$64 question, good luck to you. What President was once an architect? What President was once an architect?

357 Mrs. BROWN. Cleveland.

Mr. BAKER. No. Once an architect. Will you hold this while I pour some coffee, please. What President was once an architect?

Mrs. BROWN. Thomas Jefferson.

Mr. BAKER. Thomas Jefferson gives you \$64.

I'll be back in a moment with the pay-off question. But first here is Ken Roberts with an announcement.

Mr. ROBERTS. Recently one of our largest city's survey of public elementary schools revealed conditions that are hard to believe, children were sitting not only two in a chair, but on the radiators, on the floors or standing in the aisles. They were forced to carry their outer clothing from class to class because of lack of locker space.

These conditions as well as serious fire hazards and teacher shortages are robbing our children of the kind of education they deserve. It is up to parents to know what their local schools are like and to demand the elimination of all these bad features. Get busy in your local PTA and other civic groups to make sure that the children of your town are getting a square deal in school. Remember, America's future lies with its children.

Mr. BAKER. This is Phil Baker again, friends, with the pay-off question. Tonight the pay-off is worth \$86. Remember this is strictly a race. Every contestant has an equal chance. The first one with the correct answer wins the entire pay-off. If a contestant here on our stage gets the correct answer, you will hear a bell. You will have 30 seconds in which to answer. Get ready, here's the pay-off question:

358 Who just won an Academy Award as the best supporting actress?

Hold it. We have an answer from one of our contestants. Who was the winner, Ken?

Mr. ROBERTS. Mrs. Ada Kravitz of Ridgewood, Long Island.

Mr. BAKER. All right, the pay-off question was, "Who just won an Academy Award as the best supporting actress?" What was your actress?

Mrs. KRAVITZ. Josephine Hull.

Mr. BAKER. Josephine Hull is correct, and you win \$86. Congratulations. Thanks for being with us and good luck.

Mr. ROBERTS. This is Ken Roberts saying good night for the \$64 Question.

359 *Exhibit E to amended complaint*

NBC

WHAT'S MY NAME

April 11, 1951, 1:00-1:30 p. m.

360 TED BROWN. NBC Television presents S-p-e-i-d-e-l. Speidel watchbands.

(Chorus. [Singing.] Stop wristwatch shock, stop wristwatch shock, stop wristwatch shock, stop wristwatch shock with Speidel wristwatch bands.)

(Stop wristwatch shock, stop wristwatch shock, stop wristwatch shock, stop wristwatch shock with Speidel wristwatch bands.)

(Speidel.)

Mr. BROWN. Speidel presents our stars, Paul Winchell and Jerry Mahoney, playing What's My Name. [Applause.]

JERRY MAHONEY. Thank you very, very much, ladies and gentlemen.

PAUL WINCHELL. Wait a minute.

JERRY MAHONEY. What?

PAUL WINCHELL. What's with this outfit you're wearing tonight?

JERRY MAHONEY. Don't you know?

Tonight I'm supposed to be a Lepkin.

PAUL WINCHELL. A what?

JERRY MAHONEY. A Liskon—a Lepskun.

PAUL WINCHELL. A Leprechaun?

JERRY MAHONEY. That's what I said, you jerk, a Lepekon.

PAUL WINCHELL. Really?

JERRY MAHONEY. Yes.

PAUL WINCHELL. You know, if you want to be a Lepekon you've got to have the right type of ears.

JERRY MAHONEY. I do?

361 PAUL WINCHELL. Certainly. Let me put these ears on you. Now turn this way.

JERRY MAHONEY. What are you going to do?

PAUL WINCHELL. There's one [putting on false ear].

JERRY MAHONEY. You better put the other one on, I'm lopsided.

PAUL WINCHELL. Just a moment. I'll have them on in a second.

JERRY MAHONEY. Hurry up. Do it right.

PAUL WINCHELL. All right. There you are. Now, how does that feel?

JERRY MAHONEY. Boy, oh, boy, I wish I could wear these ears all the time.

PAUL WINCHELL. Why?

JERRY MAHONEY. It would sure save a lot of washing.

PAUL WINCHELL. Well, how come you're all dressed up? What's the occasion?

JERRY MAHONEY. What's the occasion?

PAUL WINCHELL. Yes.

JERRY MAHONEY. Boy, Winchell, you're "iggorent." That's what you are, "iggorent."

PAUL WINCHELL. What do you mean?

JERRY MAHONEY. Don't you know that St. Patrick's Day is coming up? You ought to be ashamed of yourself.

PAUL WINCHELL. I was only kidding, Jerry. I know it's coming up.

JERRY MAHONEY. You do?

PAUL WINCHELL. Sure. Why, I am all prepared for St. Patrick's Day.

362 JERRY MAHONEY. Really?

PAUL WINCHELL. Listen.

John O'Garde, please.

PAUL WINCHELL (singing). Sure, a little bit of heaven fell from out the sky one day.

JERRY MAHONEY. And it nestled in the ocean in a spot so far away.

PAUL WINCHELL. And when the angels found it, sure, it looked so sweet and fair.

JERRY MAHONEY. They said, "Suppose we leave it, because it looks so peaceful there."

PAUL WINCHELL. Then thy sprinkled it with stardust just to make the shamrocks grow.

JERRY MAHONEY. 'Tis the only place you'll find them no matter where you go.

PAUL WINCHELL. Then they dotted it with silver just to make it look so grand.

JERRY MAHONEY. And when they had it finished, sure, they called it—Ire—they called it——

PAUL WINCHELL. Ireland.

JERRY MAHONEY. Ire——

PAUL WINCHELL. Ire——

JERRY MAHONEY. Ire——

PAUL WINCHELL. Ire——

Jerry MAHONEY. If I sing any higher, my eyes will pop out.

PAUL WINCHELL. Sure, they called it Ireland. [Applause.]

(Musical cue and Winchell dances; singing.)

363 PAUL WINCHELL. Shake hands with Your Uncle Mick, me boy, and this is your Sister Kate, and here's the gal you used to swing, down by the garden gate.

Shake hands with all the neighbors and kiss the colleens all.

JERRY MAHONEY. You're as welcome as the flowers in May—sure, and this song warms the cockles of me heart.

PAUL WINCHELL. In dear old——

JERRY MAHONEY. Donegal. [Applause.]

Mr. BROWN. And now, Paul and Jerry, I want you to meet our first contestant, Adrienne Cooper, of New York City.

Here's your Speidel watchband (handing to contestant). I'm sure you'll know it, and sure, and she's ready for that hundred-dollar bond.

JERRY MAHONEY. Please, pull my dress down. It's very embarrassing.

PAUL WINCHELL. Go ahead and ask the question.

JERRY MAHONEY. You know something, it's good luck when a girl gets kissed by a Lepekon.

(Contestant leans over toward Jerry.)

JERRY MAHONEY. Timber.

PAUL WINCHELL. Wait a minute now. That's not true, Jerry. That's only a myth.

JERRY MAHONEY. Yes? Well, this is the myth I'd like to kiss.

PAUL WINCHELL. Behave yourself.

JERRY MAHONEY. Could I?

(Contestant kisses Jerry.)

364 JERRY MAHONEY. Oh, I can't stand it.

PAUL WINCHELL. Just ask the question.

JERRY MAHONEY. Okay.

Now, in this last number that I just sang, I played the part of the guy who originally introduced "Sure, a little bit of heaven fell from out the sky one day."

PAUL WINCHELL. So, for a hundred-dollar bond, can you tell for Speidel——

JERRY MAHONEY. What's my name? You have one chancey, that's all.

Miss COOPER. Chancey?

JERRY MAHONEY. That's all youve got. That's all you've got, chancey, chancey, chancey, oh.

Miss COOPER. Chauncey O'Hara.

JERRY MAHONEY. That's all you've got.

(Buzzer sounds.)

JERRY MAHONEY. Shall we give it to her? She was close, Chauncey Olcott.

All right, you got it. You was close enough.

PAUL WINCHELL. Okay, you win a hundred-dollar bond, and congratulations.

JERRY MAHONEY. That was for the kiss.

PAUL WINCHELL. All right, Ted Brown.

Mr. BROWN. Okay, Paul.

We'll be back in just a moment with more amusing clues, but right now Don Hancock is waiting with a word by Speidel.

(Speidel watchbands.)

(Stop wristwatch shock with Speidel watchbands. Speidel.)

365 DON HANCOCK. Your watch is old-fashioned without a golden Speidel band. Yes, Speidel bands not only outwear old-fashioned bands like this, but just look, look at the difference in appearance. Here's Speidel's beautiful Cortez for men, rugged, masculine. Look for the name Speidel on the back of every link, and hidden inside are calibrated springs to stop wristwatch shock. Protect the delicate mechanism of your watch.

Speidel Cortez slips on and off the wrist like lightning, too. No unwieldy clasps or buckles, and remember, Speidel's Cortez is the ideal gift for any man on all occasions, costs less than you'd guess, only \$11.95, including federal tax.

So get rid of that old-fashioned watchband. Speidel's magnificent Cortez at jewelers everywhere.

Speidel watchbands.

Mr. BROWN. And now, folks, I want you to meet Orlando Dicenzo of New Canaan, Connecticut.

And here's that beautiful Cortez Speidel watchband that Don Hancock just spoke about.

And watch that screen closely for that one-hundred-dollar bond as Diane Sinclair and Bruce Cartwright with the original composition by John Garde give us the clues as we play What's My Name.

(Diane Sinclair as an Oriental dancer and Bruce Cartwright as a soldier; she dances in front of him and drops poison in his drink; she dances with him and takes a paper from him; then stabs him.)

Mr. BROWN. All right, now.



366 [Applause.]

Mr. BROWN. You have just seen Diane Sinclair portray a famous woman spy whose own career ended with her execution, and so, for the hundred-dollar bond, can you tell for Speidel—

DIANE SINCLAIR. What's my name?

Mr. BROWN. You've got seven seconds. You've got to hurry. No matter what, you've got to Hari.

ORLANDO DICENZO. Mata Hari.

Mr. BROWN. Mata Hari is absolutely correct. You've won a \$100 bond, and congratulations, sailor.

Now, we're going to prove to you that the hand is quicker than the eye. We're going to change contestants right before your eyes without magic and nothing up my sleeve.

What's your name?

CONTESTANT. Bernice Saul.

Mr. BROWN. Watch your screen closely, for that \$100 bond, as Betty Ann Neiman portrays a famous movie star, with music by John Garde, as we play What's My Name.

(Betty Ann Neiman (singing) There's a doctor living in our town. There's a lawyer and Indian, too. Neither doctor, lawyer or Indian chief can love you any more than I do. There's a barrel of fish in the ocean. There are lots of little birds in the blue. Neither fish nor fowl, says the wise old owl, could love you any more than I do. No, no, no, it couldn't be true, that anyone else could love you like I do. No, no, no, no, that anyone else could love you like I do. Like I do. Like I do.)

[Laughter and applause.]

367 Mr. BROWN. All right, Mrs. Saul. First, let me give you this Speidel watchband. Take it back to North Dakota with you, and you have just seen Betty Ann Neiman portray a famous movie star who introduced that song.

So, now, for a \$100 bond, can you tell for Speidel—

BETTY ANN NEIMAN. What's my name?

Mr. BROWN. All right, you've got 10 seconds. I'm sure you know. She's blond, vivacious, and dynamite.

Mrs. SAUL. Betty Hutton.

Mr. BROWN. Betty Hutton is right. And you win a \$100 bond, and congratulations.

Now, if you folks out there would like a chance at that mystery, What's My Name, all you have to do is send your name and address and phone number, and the call letters of the TV show you are watching, to Speidel Show, Box 811, New York 46, New York, and we'll receive your cards. No letters, please, just cards. We'll try to call you and give you a chance at that money.

Our next contestant right now is standing by waiting for a chance at that \$100 bond. Watch closely as Paul Winchell, as-

sisted by Julie Bennett, portrays a famous character from the works of Victor Hugo, as we play *What's My Name*.

(Paris, 1481. Voice: Esmeralda, a Gypsy dancer, was sentenced to be burned as a witch, but she has been miraculously rescued and carried up to the roof of the Cathedral of Notre Dame.)

(PAUL WINCHELL, acting as Quasimodo: I am sorry I am so ugly. You must hide here. You are in the sanctuary of the cathedral. Here no one may seek you. It is the custom; 268 but stir not a step out of Notre Dame or they will catch you and kill you.)

(ESMERALDA. Oh, no, no.)

(WINCHELL. It will be the death of me, too. Don't be afraid. I am your friend. There, now, you don't have to look at me [turning away].)

(ESMERALDA. Why did you save me? Why did you save me from the execution?)

(WINCHELL. Did you speak to me?)

(ESMERALDA. Yes.)

(WINCHELL. You must know that I am deaf. You'd think nothing else was wanting, wouldn't you? As I lay upon the torture wheel, my body gashed by whips, my throat parched for drink, the crowd looking at me, you pitied me. You brought me drink to quench my burning thirst. I've not forgotten. You're so beautiful, a sunbeam, a drop of dew, a bird's song. Never before was I aware of how hideous I am. I must appear to you like a beast, something frightful, neither man nor brute, something loathsome, more shapeless and more like the mud of the streets, a misshapen monster.)

(ESMERALDA. Please.)

(WINCHELL. Here, take this whistle, Esmeralda. When you need me, when you have courage to seek me, whistle that. I shall hear that sound.)

(Esmeralda screams.)

(WINCHELL. They are trying to break into the church. They must not do that. They will defile the sanctuary.)

(ESMERALDA. No.)

(WINCHELL. Do not be afraid, I will protect you. I will break them to pieces. I will dash them to the streets 369 below. I will kill them, kill, kill.) [Applause.]

Mr. BROWN. Now, I want you to meet Paul Winchell. This is George Buchard, New Hampshire, and here's your Speidel Sir Galahad watchband, and I know you will wear it well.

He is all set to talk to you. Don't be frightened of him, now.

PAUL WINCHELL. I got a million of them.

JERRY MAHONEY. Hey, who are you?

PAUL WINCHELL. What?

JERRY MAHONEY. Who are you, who's this creep?

PAUL WINCHELL. Wait a minute.

(Takes off mask of Quasimodo.) (Jerry screams.)

PAUL WINCHELL. Come up here. I have a question to ask.

JERRY MAHONEY. Oh, I'm sorry. Well, how-do-you-do, kid. How are you?

Mr. BUCHARD. Fine, thank you.

PAUL WINCHELL. Look, did you like that little sketch I did about Notre Dame?

JERRY MAHONEY. I didn't care for the Notre, but I sure like the Dame.

PAUL WINCHELL. Now, then, here's the question.

In this sketch I played the famous role of the Hunchback of Notre Dame.

JERRY MAHONEY. Now, for the \$100 bond, can you tell for Speidel—

PAUL WINCHELL. What's my name? I'm sure you know it.

370 JERRY MAHONEY. What's the name? It doesn't motto—matter, if you don't know. [Buzzer sounds.]

PAUL WINCHELL. Oh, I'm terribly sorry, but the Hunchback's name was Quasimodo.

Anyway, you get a \$25 bond and a beautiful Speidel watchband.

JERRY MAHONEY. And thank you very much for helping us out. See you later.

PAUL WINCHELL. Okay, Ted Brown.

Mr. BROWN. Okay, Paul.

We'll be back in just a moment with the mystery What's My Name, but first, here's Don Hancock with a word about Speidel.

(Stop wristwatch shock with Speidel wristwatch bands. Speidel.)

DON HANCOCK. Every man and woman knows style in clothes does make a difference. Yes, what a difference, and style is just as important in your watchband. Just look, see how Speidel's beautiful Golden Harvest dresses up a watch, makes it look like new again. Speidel's Golden Harvest is an exquisite bracelet designed of golden shafts of wheat that is truly stunning, truly eye-arresting, has calibrated springs, stops wristwatch shock, slips up your wrist conveniently when washing hands, dishes, baby's things.

Yes, wherever you go, you'll be proud you're wearing Speidel's Golden Harvest. Feminine, graceful, always in style.

Don't be satisfied with anything less than Speidel for yourself or as a gift.

371 Ask your jeweler for Speidel's Golden Harvest. Only \$10.95, including federal tax.

Mr. Brown. And now the mystery What's My Name.

Each week the money missed by our contestants is put to the grand prize, which tonight totals \$700 in bonds, and one of you viewers out there has got a chance to win that if you can answer this next question correctly. Our operators have someone on the phone right now. [Picks up the phone.]

Hello, Virgil M. Austin, Hyattsville, Maryland.

All right now, watch your screen closely for \$700 in bonds, as Paul Winchell and Jerry Mahoney give us the clues to the Mystery What's My Name.

Winchell and Mahoney, private eyes.

VOICE. Tonight we bring you another escapade from the files of those two master detectives, Paul Winchell and Jerry Mahoney.

JERRY MAHONEY. My partner and I are private eyes, and my pal Winchell is a great detective. He's got the strength of a watchdog, the mind of a bloodhound, and the face of a cocker spaniel.

PAUL WINCHELL. Come on, cut it out.

JERRY MAHONEY. Why don't you answer the telephone?

PAUL WINCHELL. Well, it didn't ring yet.

JERRY MAHONEY. Are you going to wait until the last minute?  
[Telephone rings.]

JERRY MAHONEY. I'll get it.

Hello.

WOMAN'S VOICE. Save me, save me.

372 JERRY MAHONEY. Take it easy, lady. I can hear you.

VOICE. A monster is chasing me with a knife.

JERRY MAHONEY. I can't hear you.

VOICE. A monster is chasing me with a knife.

JERRY MAHONEY. I can't hear you.

PAUL WINCHELL. Well, I can hear her.

JERRY MAHONEY. Then you go save her. [Laughter.]

PAUL WINCHELL. Give me that telephone.

VOICE. Hello, this is Mrs. Van Snort. My jewels have been stolen. My husband has been shot. My brother has been strangled. My nephew has been stabbed. My sister has been poisoned—

JERRY MAHONEY. So, how's the family? [Laughter.]

PAUL WINCHELL. Hello, Mrs. Van Snort. Do you have any idea who did it?

VOICE. Yes, it was the skinny man.

PAUL WINCHELL. The skinny man?

VOICE OF SKINNY MAN. You heard her, copper.

PAUL WINCHELL. Wait a minute, who is this?

VOICE OF SKINNY MAN. The skinny man. [Screams and sound of falling down.] [Laughter.]

VOICE OF SKINNY MAN. Sit up, you jerk. Now, listen. You stay out of this or you'll get killed.

PAUL WINCHELL. Yes. Well, we're not afraid of you, Skinny Man.

VOICE OF SKINNY MAN. Oh, no?

373 PAUL WINCHELL. No.

VOICE OF SKINNY MAN. Here's a sample. [Shot knocks Winchell's hat off.] [Laughter.]

PAUL WINCHELL. What am I going to do?

JERRY MAHONEY. Control yourself.

PAUL WINCHELL. Jerry, he said he would kill me.

JERRY MAHONEY. Winchell, take it easy. Your nerves are getting shot.

PAUL WINCHELL. I'm too young to die.

JERRY MAHONEY. There's a shot of liquor and a chaser. Drink it and you'll feel better.

PAUL WINCHELL. Yes, okay. [Drinking from glass.]

JERRY MAHONEY. Now, drink the liquor. [Laughter.]

PAUL WINCHELL. Suddenly I realized I had the case cracked wide open. [Laughter.]

PAUL WINCHELL. I read in the paper once in order to get skinny, go to the Turkish bath. So we decided to go over to the Turkish Bath, because we were out to get skinny, and we figured if we kept our eyes opened, we might learn something.

JERRY MAHONEY. Yes, especially since it was ladies' night. [Laughter.]

(Turkish bath.)

ACTRESS B. Boy, these jewels are gorgeous.

ACTOR A. Sure, the Van Snorts only buy the best.

ACTRESS B. Hey, get out of here, this is the ladies department.

374 ACTOR A: Don't worry, baby. Nobody comes in here.

FEMALE VOICE. Attention, two ladies coming up.

ACTOR A. Quick, we've got to hide the jewels.

ACTRESS B. Give them to me. I'll put them in the steam cabinet.

ACTOR A. Yes, I'll get out of here. Take it easy. Don't worry. (Winchell and Mahoney enter dressed as ladies.)

JERRY MAHONEY. A pretty girl is like a melody.

PAUL WINCHELL. Isn't this a lovely place, Tallulah?

JERRY MAHONEY. Yes, darling. It's — [Screams]

ACTRESS B. Excuse me, ladies, what can I do for you?

JERRY MAHONEY. Well, nothing for me at all, dearie, but my girl friend here wants to reduce. Don't you, Daisy?

PAUL WINCHELL. Yes, I would. Oh, yes, I mean —

JERRY MAHONEY. She means she wants to reduce, fatso.

ACTRESS B. Fatso—I'll have you know I'm a perfect 32.

JERRY MAHONEY. Would you care to loosen your girdle and try for 64? [Laughter.]

PAUL WINCHELL. Tallulah darling, you must remember, dear, her weight is her business.

JERRY MAHONEY. Well, she sure has been in business a long time. [Laughter.]

ACTRESS B. You mean —

(Actress B leaves.)

375 PAUL WINCHELL. Suddenly I realized I had the case cracked wide open. [Laughter.]

PAUL WINCHELL. I had a hunch that the skinny man was here, and we would catch him even though he was slippery and as slim as an eel.

JERRY MAHONEY. Yes, he was a slippery schlemiel. [Laughter.]

JERRY MAHONEY. Do you see him anywhere?

PAUL WINCHELL. No, I don't see him. [Screams.]

JERRY MAHONEY. 'E gads, a man. How dare you come in here. What kind of a joint is this?

ACTOR A. Hello, cutie pie.

JERRY MAHONEY. Fresh. Oh, I'll give you such a knop.

ACTOR A. Would you like to go out with me Thursday night?

JERRY MAHONEY. I'm sorry, kid, I'm getting married Thursday night.

ACTOR A. Oh.

JERRY MAHONEY. How about Friday night?

ACTOR A. What?

JERRY MAHONEY. I mean, I'm looking for a skinny man.

PAUL WINCHELL. Shut up.

ACTOR A. What? Oh, there's a couple of coppers looking for the skinny man, too.

PAUL WINCHELL. Coppers?

ACTOR A. One is tall and one is short.

JERRY MAHONEY. Short?

376 ACTOR A. If I ever see the short one, I'll let him have it.

PAUL WINCHELL. Where are you going, Tallulah?

JERRY MAHONEY. Shut up, shorty.

PAUL WINCHELL. Excuse me, we must leave now.

ACTRESS C. All right, ready, line up for our exercise.

PAUL WINCHELL. But you don't understand—

ACTOR A. Line up.

JERRY MAHONEY. Hey, you want a sock?

ACTOR A. Yes.

JERRY MAHONEY. What size do you wear? [Laughter.]

ACTRESS C. All right now, our exercises. Bend the knees. Down up, down up, down up, down up.

JERRY MAHONEY. I'm going the wrong way. You're going the wrong way.

ACTRESS C. Point the toes, 1, 2.

JERRY MAHONEY. What'll we do.

ACTRESS C. 3, 4.

JERRY MAHONEY. Let's make for the door.

ACTRESS C. 5, 6.

JERRY MAHONEY. Nix, nix.

ACTRESS C. 7, 8.

JERRY MAHONEY. Oh, this is great.

ACTRESS C. 9, 10.

JERRY MAHONEY. He's in again.

ACTRESS C. 11, 12.

PAUL WINCHELL. [Dancing.] 13, 14, 15, 16.

377 JERRY MAHONEY. Hey, you're choking me. Cut it out. Hey, Daisy.

PAUL WINCHELL. Yes, darling.

JERRY MAHONEY. Your neckline just plunged. [Laughter.]

JERRY MAHONEY. Tennis, anyone?

(Actor A shoots gun and chases Winchell and Mahoney away.)

PAUL WINCHELL. Where are they?

JERRY MAHONEY. Let's get in the steam box.

PAUL WINCHELL. Okay, you get in first.

(Both climb in steam cabinet.)

PAUL WINCHELL. Are you okay?

JERRY MAHONEY. Yes.

(Actor A gets in steam cabinet.) [Laughter.]

(Actress C gets in steam cabinet.)

(Actress B gets in steam cabinet.)

(From inside cabinet. Wait a minute. Next stop Times Square, change for Coney Island.)

PAUL WINCHELL. [Head sticking out of cabinet.] Suddenly I realized I had the case cracked. All right, you, I've had enough of this nonsense. Now come out of there, all of you. That aboy, come on out and put your hands up, and keep them up. Up against that wall, Come on, you two, all of you, every one of you. Got you all single-handed.

Wait a minute, where is Jerry? Jerry, where are you? Jerry, where are you? What's this [looking in steam cabinet and pulling out thin cardboard strip made to look like  
378 Jerry Mahoney]. [Laughter.]

JERRY MAHONEY. Wait a second. I'm okay now, Winch.

PAUL WINCHELL. There they are, kid. I got them all.

JERRY MAHONEY. Did you get the skinny man there?

PAUL WINCHELL. Yes.

JERRY MAHONEY. Where is he?



PAUL WINCHELL. Right over there [points to Actor A].

JERRY MAHONEY. Are you kidding, that ain't the skinny man.

PAUL WINCHELL. No? [Puncturing balloons under the coat of Actor A.]

ACTOR A. I'll get you for this. [Laughter.]

PAUL WINCHELL. Well, folks, that ended the case of the skinny man.

JERRY MAHONEY. Yes, and you know something, we knew that he was full of hot air all the time.

Good night, Martin.

JERRY MAHONEY. Good night, sweetheart. [Applause.]

MR. BROWN. All right, Mrs. Virgil M. Austin of Hyattsville, Maryland, you've just seen the clues. Now I want you to talk to Paul Winchell and Jerry Mahoney, and here they are.

PAUL WINCHELL [Picking up phone.] All right, here's what we want you to guess. Now, I did a takeoff with Jerry of Martin Kane, Private Eye.

JERRY MAHONEY. Now, we want to know the name of the  
379 actor who does Martin Kane on television.

PAUL WINCHELL. So, for the grand total of \$700 in bonds—

JERRY MAHONEY. Can you tell for Speidel—

PAUL WINCHELL. What's my name? [Contestant answers.]

PAUL WINCHELL. Who? [Contestant answers again.]

PAUL WINCHELL. William Gargen is absolutely right.

JERRY MAHONEY. You win the prize.

PAUL WINCHELL. The mystery \$700 What's My Name jackpot. Now, folks, here's a few words from Don Hancock about Speidel.

JERRY MAHONEY. He got it right, didn't he?

PAUL WINCHELL. Yes.

(Speidel watchbands. Stop wristwatch shock with Speidel watchbands. Speidel.)

DON HANCOCK. Men, your watch can never look its best or be its best without a golden Speidel band. Just look at the difference. See how Speidel's Sir Galahad sets off your watch, makes it look like new again, bold and masculine with a rugged and strikingly handsome curved chain design.

On the back of every link you will see this name, Speidel, your assurance that inside every link are calibrated springs to stop wristwatch shock, protect the delicate mechanism of your watch.

Speidel watchbands slip on and off of the wrist like magic, no awkward buckles.

380 A Speidel band is a real investment. No fine watch should be without its beauty. It's perfection. See Spei-

del's Sir Galahad at your jeweler tomorrow. Only \$12.95, including federal tax.

Speidel watchbands.

Ladies and gentlemen, I want to thank you very, very much.

JERRY MAHONEY. Wait a second, knucklehead. I'm working, too, you know.

PAUL WINCHELL. I'm sorry, excuse me.

JERRY MAHONEY. Oh, It gets so warm up here (wiping forehead).

PAUL WINCHELL. We are indeed happy that the jackpot was won tonight and I'd also like to tell you that that's about all the time we have now, so in the meantime—we've got to go now, hope you've liked our show.

JERRY MAHONEY. You can join us—it's something that we want you all to know—go ahead, tell them.

PAUL WINCHELL. Me?

JERRY MAHONEY. Yes.

PAUL WINCHELL. We'll be back next week. Please don't forget.

JERRY MAHONEY. To turn on your television set.

PAUL WINCHELL. We've got to go now,—

JERRY MAHONEY. It's been a lot of fun. [Applause.]

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*Exhibit F to amended complaint*

NBC

DOUBLE OR NOTHING

April 3, 1951, 2:00-2:30 p. m.

382

Mr. LOU CROSBY. Stay tuned for Double or Nothing.  
Produced and transcribed in Hollywood.

It's refreshing, it's healthful and delicious. It's V-8 vegetable juices.

V-8, you know, is not just one juice, but a delicious blend of 85 juices from garden-fresh vegetables, no wonder V-8 has a lively flavor and wholesome goodness no single juice can match. V-8 is a great pepper-upper. Serve it often with meals and between. Your family will love V-8. Try it today. V-8 vegetable juices.

Campbell Soup presents Double or Nothing, starring Walter O'Keefe.

Have soup for lunch. Yes, every day 27 million Americans have soup for lunch. It's quick to fix, nourishing and so delicious. Often we have Campbell vegetable soup, a regular market basket of garden vegetables in homey beef stock. Hmm, hmm, good. Have it soon, Campbell's vegetable soup for lunch.

Here now is Double or Nothing.

Your paymaster of ceremonies, Walter O'Keefe.

Mr. O'KEEFE. Thank you, thank you very much, ladies and gentlemen, for such a hearty welcome.

Greetings to all of you around the country and in case it has escaped your attention, this happens to be one of those officially designated special weeks. You know, like "Be Kind to Animal Week," eat an animal or eat an apple a day.

Yes, I got that better than I thought, you know.

This one has just been named "Be Kind to Your Wife Week."

383 No, now wait a minute. I think we should pay a sincere tribute to wives in general. After all, a wife is someone who helps her husband through troubles and trials and worry and aggravation that he never would have gotten into if he hadn't married her in the first place.

We have a very gay soul coming up to the microphone, born in Rotterdam, Holland.

Mrs. MUSHINSKY. Rotterdam.

Mr. O'KEEFE. Rotterdam?

Mrs. MUSHINSKY. Rotterdam, yes.

Mr. O'KEEFE. I thought it was Rotterdam.

Mrs. MUSHINSKY. No, it sounds like you're cursing me, if you say it that way.

Mr. O'KEEFE. All right, then let us clean it for good, Rotterdam.

Mrs. MUSHINSKY. Rotterdam.

Mr. O'KEEFE. Rotterdam?

Mrs. MUSHINSKY. That's right.

Mr. O'KEEFE. Your name is Mrs. Joanne Mushinsky?

Mrs. MUSHINSKY. That's right.

Mr. O'KEEFE. And you have three children and one grandchild?

Mrs. MUSHINSKY. Yes, and a husband.

Mr. O'KEEFE. You have a husband. I will tell you one thing, Joanne, that husband has got a wife, believe me, and quite a gal, Joanne.

You have got three children, one grandchild and you run a general store?

384 Mrs. MUSHINSKY. Yes.

Mr. O'KEEFE. Where?

Mrs. MUSHINSKY. Green Valley.

Mr. O'KEEFE. What do you sell?

Mrs. MUSHINSKY. Gas, oil, beer, wine, notions, drugs, and Campbell's products.

Mr. O'KEEFE. Thank you very much for putting in the plug.

But the second thing you said, gas, earl—

Mrs. MUSHINSKY. Oil.

Mr. O'KEEFE. I thought maybe coming from Holland you spent a year or two in Brooklyn, that is the way it sounded.

Mrs. MUSHINSKY. Chicago.

Mr. O'KEEFE. Chicago, I see.

I would like to know this Joanne, you are a person of great joie de vivre, shall I say?

Mrs. MUSHINSKY. You speak French, huh?

Mr. O'KEEFE. No, but I know that much, Joanne.

You have great joie de vivre and great bounce and I would like to know how you met your husband, because I don't think anything ordinary ever happened to you.

Mrs. MUSHINSKY. Never.

Mr. O'KEEFE. I didn't think so. How did you meet your husband?

Mrs. MUSHINSKY. I picked him out of the water.

Mr. O'KEEFE. You were sort of a mermaid?

Mrs. MUSHINSKY. I never asked him.

Mr. O'KEEFE. You pulled him out, and let me ask you  
385 this, how long after you pulled him out of the water soaking wet did you get him carried to yourself?

Mrs. MUSHINSKY. This happened the seventh of July, about four months.

Mr. O'KEEFE. Four months?

Mrs. MUSHINSKY. Yes.

Mr. O'KEEFE. What kept him out of your grasp for so long, you're a dynamic, magnetic woman, how could he resist you?

Mrs. MUSHINSKY. I have often wondered.

Mr. O'KEEFE. Joanne dear, how old are these kids of yours? I see you have one grandchild.

Mrs. MUSHINSKY. I have one 21, and one 17 and one 8.

Mr. O'KEEFE. What do they do, what does the 21-year-old one do?

Mrs. MUSHINSKY. She's the married one.

Mr. O'KEEFE. She's the married one?

Mrs. MUSHINSKY. That's right.

Mr. O'KEEFE. Your grandchild is your pride and joy?

Mrs. MUSHINSKY. Oh, and how, he is a year old.

Mr. O'KEEFE. Is he working yet?

Mrs. MUSHINSKY. Oh, he comes around to the store and messes things up.

Mr. O'KEEFE. I know.

Let me ask you this, Joanne, let me ask you this: Let's say you won \$40 or \$120, like people do frequently on this program, what would you do with the money?

Mrs. MUSHINSKY. Oh, I never count my chickens until they are hatched.

386 Mr. O'KEEFE. All right, let's try for some chickens with you.

What is your favorite kind of Campbell soup, Joanne?

Mrs. MUSHINSKY. My favorite kind, I like the mushroom soup.

Mr. O'KEEFE. The cream of mushroom?

Mrs. MUSHINSKY. Oh, yes.

Mr. O'KEEFE. We'll send you a 50-carton with the sponsor's compliments.

We have a grand slam question, the nearest answer wins you 80 bucks here.

After one day's exposure of sailors' eyes to the sun, how efficient in percentage is their vision at night? How much has he lost of his complete effectiveness?

Mrs. MUSHINSKY. I will have to join the navy and find out.

Mr. O'KEEFE. If you join the navy—

Mrs. MUSHINSKY. I would say about 40 percent.

Mr. O'KEEFE. Thank you, Joanne.

What category have you chosen?

Mrs. MUSHINSKY. Well—

Mr. O'KEEFE. Wouldn't you love to have her join the navy? I would love to see you in those kind of pants sailors wear.

Joanne, you're going to take the category having to do with famous fliers?

Mrs. MUSHINSKY. Yes.

387 Mr. O'KEEFE. I'm going to read you some short verses about different famous fliers and you're supposed to tell me the name of the flier.

For \$2 Campbell Soup says: Orville and Wilbur in 1903 were the brothers who started the flying spree. Lots of people came around to gawk when they started to fly at Kittyhawk. What was the name of those fellows?

Mrs. MUSHINSKY. The Wright brothers.

Mr. O'KEEFE. That's it.

The \$4 question for Campbell Soups: He flew the Atlantic without a stop, from New York to Paris was Lucky's hop, the Lone Eagle he called his plane, and it brought him lots and lots of fame.

Mrs. MUSHINSKY. Charles Lindbergh.

Mr. O'KEEFE. Right.

The \$6 question for Campbell's Soup: In 1938 this man took a notion to fly across the Atlantic Ocean. He landed in Dublin, scratching his head, "I am looking for sunny California," he said.

Mrs. MUSHINSKY. "Wrong Way" Corrigan.

Mr. O'KEEFE. That's the guy.

You certainly know your poetry, don't you?

Mrs. MUSHINSKY. That's about as far as I know it too.

Mr. O'KEEFE. Campbell's Soup—you know, you make my day's work so easy.

The \$10 question for Campbell's Soup: This is the flyer who was an ace and for his men he set quite a pace, his squadron was called "The Hat in the Ring." In combat they weren't  
388 afraid of a thing. He is now the President of Eastern Air Lines, a hero on a raft.

Mrs. MUSHINSKY. The Flying Tiger—no, Rickenbacker.

Mr. O'KEEFE. Would you like double or nothing?

Mrs. MUSHINSKY. I will go double or nothing.

Mr. O'KEEFE. Have you ever lost before?

Mrs. MUSHINSKY. I wouldn't know what. I can't even lose weight.

Mr. O'KEEFE. For \$20, Campbell Soup says: This man flew north to the land of snow and reached a point called Point Barrow—well what scansion we have here—Will Rogers was his passenger friend, and on this trip they met their end. What was his name? You can keep posted on things like this.

Mrs. MUSHINSKY. Wiley Post.

Mr. O'KEEFE. That's it, Wiley Post.

For \$40, Campbell Soups says: This lady was a pilot skilled, her fond public she often thrilled. She vanished a number of years ago while flying over the Pacific so low.

Mrs. MUSHINSKY. Amelia Earhart.

Mr. O'KEEFE. You have won 40 bucks, congratulations.

Now, Lou Crosby.

Mr. CROSBY. Today, Walter, I was told not to say anything about that hearty and nourishing soup that is almost a meal in itself, Campbell's vegetable soup.

Mr. O'KEEFE. Who told you not to say anything?

Mr. CROSBY. Mr. Piper, my grocer.

Mr. O'KEEFE. Does he sponsor this show?

389 Mr. CROSBY. No, Walter.

Mr. O'KEEFE. Does he make Campbell's vegetable soup?

Mr. CROSBY. No.

Mr. O'KEEFE. Well, then—

Mr. CROSBY. But he does sell it, Walter, he sells so much Campbell's vegetable soup he really has to work keeping up with the demand. Because the smart housewives who patronize his store know Campbell's vegetable soup is so delicious, every bit as delicious as the best home kind and they know Campbell's vegetable soup is nourishing, too, almost a meal in itself, made with more than a dozen ripe garden vegetables mingled in homey beef stock and seasoned to perfection.

Hmm, hmm, good. So you gals listening, today get a few extra cans of Campbell's vegetable soup.

Mr. O'KEEFE. A gentleman of distinction comes to the microphone now. He comes originally from Montana, St. Ignatius, Montana.

Now, a visitor, in the person of Jim Kearns.

Jim, we are glad to have you here.

Mr. CROSBY. Welcome to Double or Nothing.

Mr. O'KEEFE. You, keeping to my notes, are manager of the Rainbow Angling Club?

Mr. KEARNS. That's right, Walter.

Mr. O'KEEFE. I wish I met you there sometime, Jim, I have been there about three times, I think, with my boys and I hope some day I meet you there.

Mr. KEARNS. I hope to see you.

390 Mr. O'KEEFE. I hope to see you and I hope you tell me how to catch some fish.

Mr. KEARNS. That is what my job is.

Mr. O'KEEFE. You were sergeant in the Marine Corps?

Mr. KEARNS. At one time.

Mr. O'KEEFE. Were you captured?

Mr. KEARNS. I was captured on Corregidor over on the Philippines.

Mr. O'KEEFE. You were held prisoner how long?

Mr. KEARNS. Three and a half years.

Mr. O'KEEFE. Three and a half years?

Mr. KEARNS. Yes.

Mr. O'KEEFE. What did they make you do, Jim?

Mr. KEARNS. Well, a little bit of everything. Mainly the mining work, after they moved us to Japan and we worked in a mine.

Mr. O'KEEFE. You have never had any experience in that work before?

Mr. KEARNS. No, I am sorry I didn't.

Mr. O'KEEFE. Were you married at that time?

Mr. KEARNS. Yes, I was.

Mr. O'KEEFE. How did you meet Mrs. Kearns?

Mr. KEARNS. Over a cocktail table, Walter.

Mr. O'KEEFE. That's a nice way to meet her. I can just see her floating there and you're sitting down.

What's this about your having been a barber at one time, Jim?

Mr. KEARNS. Well, that was where I got my college degree.

891 Mr. O'KEEFE. What do you mean, you worked your way through college?

Mr. KEARNS. No, I graduated from college.

Mr. O'KEEFE. From a barber college?



Mr. KEARNS. A barber college, that's right.

Mr. O'KEEFE. Look, what did you charge for a clip.

Mr. KEARNS. That was 25 cents.

Mr. O'KEEFE. Did you give away the bandages that went with that?

Mr. KEARNS. No, that was a long time ago.

Mr. O'KEEFE. 25 cents a clip and for a double job, what would you charge?

Mr. KEARNS. 40 cents.

Mr. O'KEEFE. That's when you did both sides of the head.

I would like to have you win some money. What's your favorite kind of Campbell soup?

Mr. KEARNS. Tomato.

Mr. O'KEEFE. Tomato—we'll send you a gift carton with the sponsor's compliments and here is the \$80 grand slam question.

After one day's exposure of sailors' eyes to the sun, how efficient in percentage is their vision at night?

Mr. KEARNS. I would say, just guessing, 94 percent.

Mr. O'KEEFE. 94 percent. All right, James,

Here's your chance to make money and you picked the category. I understand, that has to do with how your wristwatch works.

392 Mr. KEARN. That's night.

Mr. O'KEEFE. For \$2 Campbell Soup says this: The part of the winder and the part of the plant in your garden have the same name.

Mr. KEARNS. Stem.

Mr. O'KEEFE. The \$4 question for Campbell Soups: The coil wire, usually about two feet long, when straightened out, is called what?

Mr. KEARNS. Mainspring.

Mr. O'KEEFE. The \$6 question for Campbell Soups: What wheel actually regulates the movement of the clock?

Mr. KEARNS. Balance wheel.

Mr. O'KEEFE. Now you come to the \$10 question for Campbell Soup: From the mainspring the power travels to a series of four wheels, these four wheels collectively are called what? The Atchison, Topeka, and the Santa Fe.

Mr. KEARNS. The train.

Mr. O'KEEFE. The train, yes. I gave you the answer. I didn't realize it. I apologize for helping you win this money.

Mr. KEARN. Thank you very much, Walter.

Mr. O'KEEFE. Do you want to split it with me? I didn't think so. Thank you.

Double or nothing, you want to go double or nothing?

Mr. KEARNS. Surely.

Mr. O'KEEFE. For \$20 Campbell Soup says: Inside the balance wheel is a very thin coil of steel wire called the what?

393 Mr. KEARNS. Hair spring.

Mr. O'KEEFE. Right. For \$40, double or nothing, Campbell Soups says: The train moves what on the face of the watch?

Mr. KEARNS. The hands.

Mr. O'KEEFE. You have won \$40. Congratulations, Mr. Kearns.

Our next contestant will tackle our next question in just a moment.

Mr. CROSBY. This concludes the first half of Double or Nothing brought to you by Campbell's vegetable soup.

Yes, eat hearty with Franco-American Spaghetti. Now with the second half of Double or Nothing brought to you by Franco-American Spaghetti, the hearty dish that makes you eat hearty.

Listen for the grand slam finish in the Franco-American sweepstakes and here's our paymaster of ceremonies, Walter O'Keefe.

Okay, O'Keefe.

Mr. O'KEEFE. Now, we have a gentleman who has been fighting the war in the navy for nine months, in the person of Admiral Harry Hugh.

Admiral, we are delighted to have you here.

Mr. HUGH. It is a pleasure indeed, sir.

Mr. O'KEEFE. You are known as a seaman apprentice at this point?

Mr. HUGH. That's right, sir.

Mr. O'KEEFE. Which is how high up from the bottom when you start in the navy?

394 Mr. HUGH. Not very high. I will give you a clue.

Mr. O'KEEFE. Not very high. Let me ask you this, you come from a town with a fascinating name, Tombstone, Arizona?

Mr. HUGH. Right.

Mr. O'KEEFE. From Tombstone, Arizona, you went into the navy and your job is a what, you're a cook striker?

Mr. HUGH. That's right.

Mr. O'KEEFE. I know what a cook is, but what's a cook striker?

Mr. HUGH. We don't strike the cooks, I mean it's trying to learn how to cook chow navy way.

Mr. O'KEEFE. You have a girl friend?

Mr. HUGH. Yes, I have.

Mr. O'KEEFE. I would love to know how you met her, Harry Hugh.

Mr. HUGH. Well, it was quite fascinating. I'm still thrilled by it when I think of it.

Mr. O'KEEFE. Good. I am glad to hear that.

Mr. HUGH. You see, I did a little mining back in Arizona and I met her in a mine in the mountains.

Mr. O'KEEFE. What were you doing?

Mr. HUGH. I was going up toward the mine, see, and she was coming down the other way.

Mr. O'KEEFE. What was she doing in the mine?

Mr. HUGH. She was cooking up for the rest of the miners.

Mr. O'KEEFE. I see.

Mr. HUGH. It was a very high range we were walking across and a very narrow trail, sec. I happened to be going  
395 one way and she happened to be coming the other.

Mr. O'KEEFE. For heaven's sake.

Mr. HUGH. It was too much trouble to bypass, so I just figured I would tag along.

Mr. O'KEEFE. So you chased her?

Mr. HUGH. No, no, I didn't have to. Well——

Mr. O'KEEFE. Did you put your brand on her, Harry?

Mr. HUGH. Quite.

Mr. O'KEEFE. Do you plan to get married?

Mr. HUGH. I do.

Mr. O'KEEFE. Good.

By the way, we are sending you a gift carton of Franco-American products. Remember, eat hearty with Franco-American Spaghetti.

Here's the grand slam question. After one day's exposure of sailors' eyes to the sun, how efficient in percentage is their vision at night; what is your guess?

Mr. HUGH. I would say about 90 percent.

Mr. O'KEEFE. 90 percent. Thank you Harry.

What category?

Mr. HUGH. Six.

Mr. O'KEEFE. Six, all right.

Franco-American offers you these things. What's your hobby? The 1951 Hobby Show is under way in Los Angeles at the Shrine Convention Hall. Here's the \$2 question for Franco-American.

Here's one. Oh, boy, this is a tough one. Courtesy of the Hobby Show, collecting streetcar tokens.

Now, what is this hobby called, is it called vanity, is it called vestirestry [sic] or vegetarianism?

396 Mr. HUGH. Vestirestry or whatever you call it.

Mr. O'KEEFE. I'll bet Noah Webster is whirling in his grave.

The \$4 question for Franco-American, if you are a lapidary what do you do?

Mr. HUGH. Interested in precious stones.

Mr. O'KEEFE. Earthenware, porcelain potter. If you were interested in the art of making such things, what would your hobby be, would it be sobriety, would it be ceramics, or serenity?

Mr. HUGH. Ceramics.

Mr. O'KEEFE. Ceramics, that's right, good.

What was that first word, vestirestry?

Mr. HUGH. That's right.

Mr. O'KEEFE. The \$10 question for Franco-American, if coleoptera fascinates you, what are you interested in, beagles, beetles or bugles?

Mr. HUGH. Beetles.

Mr. O'KEEFE. Gee, you certainly know these things, Harry. You're certainly using my head.

The \$20 question for Franco-American, what is the hobby indulged in by a collector of coins and medals called is it numerology, numismatology or neurology?

Mr. HUGH. Numismatology.

Mr. O'KEEFE. That is it. What was it again?

Mr. HUGH. Numismatology.

Mr. O'KEEFE. Numismatology, that is it.

The \$40 question for Franco-American, FDR was famous for his hobby, philately, what did he collect—Mr. Roosevelt?

397 Mr. HUGH. Stamps.

Mr. O'KEEFE. You have won 40 bucks. Congratulations.

This is a fix all you ladies were probably in at one time or another.

Mr. CROSBY. Yes, ma'am, you can shop as late as you want to and still have a good hearty supper, piping hot and ready for the family.

Just serve Franco-American Spaghetti. It's so hearty you don't need much else for a completely satisfying meal and the taste is so good everybody will eat heartily, for Franco-American is the very finest spaghetti, tender-cooked in a delicious sauce of ten choice ingredients, including vine-ripened tomatoes and well-aged Cheddar cheese. It's thrifty, too, costs only pennies a portion and quick to fix. Say, you just heat and eat hearty.

Mr. O'KEEFE. Only a couple of contestants ago we had the dramatic story of a gentleman named Kearns who was captured by the Japanese on Corregidor and here we have a lad, he comes originally as a citizen of Rumania. He has been in the United States from Germany for 20 months, he has been in the army six months, and his name, Private Otto Wellman, and Otto, we are glad to have you.

Otto, what were you doing in Germany?

Mr. WELLMAN. I was working in a concentration camp. We had very hard labor.

Mr. O'KEEFE. A concentration camp?

Mr. WELLMAN. That's right, sir.

Mr. O'KEEFE. Well, I'm awfully glad you came out of it as healthy—you look fine, you look strong, you must have  
 398 recovered your health that you lost there and I would like to ask you this, how come when you got to America you went into the army so fast?

Mr. WELLMAN. Well, sir, I was liberated by the United States Army in concentration camp and I felt very grateful for that fact, and besides, I was working for the army in Germany after the war and I liked it very much and I felt that way I can be grateful to the country.

Mr. O'KEEFE. Thank you very much, Otto.

Your job, according to my spies, at present is an army scout?

Mr. WELLMAN. That's right.

Mr. O'KEEFE. Exactly what does an army scout do?

Mr. WELLMAN. I am supposed to go ahead of the infantry and find out what the enemy does, and I hope my different language knowledge will help in that—

Mr. O'KEEFE. Will happen to be helpful?

Mr. WELLMAN. Yes.

Mr. O'KEEFE. How many languages do you speak?

Mr. WELLMAN. I speak Hungarian, Rumanian, German and English.

Mr. O'KEEFE. Oh, isn't that too bad, you must get confused at times, Otto.

Let me ask you this, you are not a married man yet, Otto?

Mr. WELLMAN. No.

Mr. O'KEEFE. How old are you?

Mr. WELLMAN. 23.

399 Mr. O'KEEFE. 23?

Mr. WELLMAN. Yes.

Mr. O'KEEFE. Have you got a girl friend?

Mr. WELLMAN. I sure have, quite a few.

Mr. O'KEEFE. In how many languages?

Mr. WELLMAN. In almost every one.

Mr. O'KEEFE. Otto, you seem a very well-adjusted, happy guy, when I consider the trouble you have had in your life. I am not talking about the women you have worried about, but have you got any peevs at all, any quarrels with the world?

Mr. WELLMAN. I think somebody, after what I went through when he is here in the States, he shouldn't have any and anybody in the States who realizes what is is he shouldn't have any peevs at all.

Mr. O'KEEFE. He shouldn't have any peevs at all?

Mr. WELLMAN. Shouldn't have any peevs at all.

Mr. O'KEEFE. We are a very fortunate nation.

Mr. WELLMAN. Very lucky and most of them don't realize it, but I hope they will very soon.

Mr. O'KEEFE. I hope they will, too, Otto.

Let's see if you can win some money, here, chum. We are sending you a 50-carton of Franco-American products. Remember, eat hearty with Franco-American Spaghetti.

Here's what we call our grand slam question, after one day's exposure of sailor's eyes to the sun, how efficient in percentage is their vision at night, what would you say?

Mr. WELLMAN. Well, a sailor should know, I think its about 90 percent.

400 Mr. O'KEEFE. You say 90 percent?

Mr. WELLMAN. Right.

Mr. O'KEEFE. What category for you, Otto?

Mr. WELLMAN. Music.

Mr. O'KEEFE. Music. Are you up on your juke-box stuff?

Mr. WELLMAN. On the late stuff, yes, I think.

Mr. O'KEEFE. May I explain this, I always like to make a person feel at home and for heaven's sake, if you come to an answer you don't know, give it to me in one of the other four languages and I will understand.

Mr. WELLMAN. All right.

Mr. O'KEEFE. Here's the Franco-American \$2 question and Herb Organ is going to play this, he is going to ask a question on the organ.

(Music.)

Mr. WELLMAN. "Should I."

Mr. O'KEEFE. That's it.

In the \$4 question for Franco-American, he suggests the answer to "Should I."

(Music.)

Mr. WELLMAN. (Foreign tongue.)

Mr. O'KEEFE. Absolutely right.

For the benefit of people who do not understand Sanskrit, he just said, "No, no, a thousand times no."

Mr. WELLMAN. Yes.

Mr. O'KEEFE. The \$6 question for Franco-American, what is this question?

401 (Music.)

Mr. WELLMAN. "Why Can't You Behave?"

Mr. O'KEEFE. Yes, that's what we keep saying to Russia, "Why can't you behave?"

The \$10 question for Franco-American, "Why can't you behave" might get this answer—this is before his time in America, believe me.

(Music.)

Mr. WELLMAN. "That's My Weakness Now."

Mr. O'KEEFE. Hey, you're pretty hep because that song was around a long while ago. How come you know so much about songs?

Mr. WELLMAN. My father used to have a band, he was a band leader and it was most popular in Europe.

Mr. O'KEEFE. It was most popular in Europe?

Mr. WELLMAN. It was very popular.

Mr. O'KEEFE. Then I don't worry about the \$20 question. This was a great hit in America and all over the world. Franco-American says what is this question?

(Music.)

Mr. WELLMAN. "Qui."

Mr. O'KEEFE. I beg pardon?

Mr. WELLMAN. "Qui."

Mr. O'KEEFE. Oh, yes, sure.

Mr. WELLMAN. Of course, that means "Who".

Mr. O'KEEFE. It means "Who?"

Mr. WELLMAN. For the people who don't know it.

402 Mr. O'KEEFE. For the people who don't know it. You and I knew all the time. I never had my leg pulled so beautifully for the \$20 in any language.

Franco-American says:

(Music.)

Mr. WELLMAN. "It Had to be You."

Mr. O'KEEFE. You won 40 bucks. Congratulations. Thank you.

We will be back in just a moment with the grand slam winner in the Franco-American sweepstakes, but now Lou Crosby.

Mr. CROSBY. For a delicious and substantial supper that is easy on your pocketbook serve Franco-American Spaghetti, you'll like this hearty spaghetti with its luscious sauce of tangy Cheddar cheese and juicy tomatoes and it tastes so good. All eat hearty.

Just add a tossed salad, toasted rolls, apple sauce and cookies for a delightfully satisfying meal.

Yes, ma'am, when you serve Franco-American Spaghetti you sure eat hearty \* \* \*.

Mr. O'KEEFE. The grand slam question: "After one day's exposure of sailors' eyes to the sun, how efficient in percentage is their vision at night," the answer is 50 per cent, and the Holland storekeeper, Joanne Mushinsky, with an estimate of 40 per cent, wins the money.



Mr. CROSBY. Now friends, our most exciting moment in the Franco-American sweepstakes. Today's cash prize from Franco-American amounts to \$210. Today's winning question comes from Mrs. Roy C. Hearndon of 505 Park View Avenue, Westfield, 403 New Jersey, and we'll pay half our sweepstakes, \$105 for it. The first contestant to come up with the correct answer wins the other half of our sweepstakes, or \$105.

If no one wins, the studio contestant's half of the money will be added to tomorrow's Franco-American sweepstakes.

Walter.

Mr. O'KEEFE. You have 30 seconds for Mrs. Hearndon's question. It's not too tough. The word "chortle," is defined as laughing in a chuckling, snorting fashion, by what children's author was this humorous word coined?

No, we have no winner. The sweepstakes question came from Westfield, New Jersey. The answer, Lewis Carroll.

Congratulations, Mrs. Hearndon. The check is on the way to you now. Thank you very much.

Mr. CROSBY. Every day on Double or Nothing you listeners have a chance to win half the sweepstakes money by sending in the winning sweepstakes question.

Here's all you do: Make up a question on any subject, print your name and address on the back of a Franco-American Spaghetti label, that is, a label from a can of Franco-American Spaghetti, add the call letters of the station on which you hear Double or Nothing, and write your question and answer under your name and indicate a standard authority, such as an encyclopedia, atlas or other source where we can check the accuracy of your answer.

Then mail it to Double or Nothing Sweepstakes, Box 551, Hollywood 28, California.

Questions will be judged on the basis of originality, interest and neatness and clarity of presentation.

404 Entries to be considered for next week's program must be postmarked during the seven days prior to midnight this Saturday.

The person who submits the winning entry receives one-half the sweepstakes for that program. The decision of the judges is final. Duplicate prizes will be awarded in case of ties. All questions become the property of the makers of Franco-American Spaghetti and none will be returned.

Mr. O'KEEFE. This is Walter O'Keefe saying goodbye, and when you shop, look for the name Franco-American, for you know you eat hearty with Franco-American Spaghetti.

407

In United States District Court

Civil Action No. 52-37

[Title omitted.]

*Notice of motion for summary judgment*

(Filed September 22, 1952)

SIRS: Please take notice that upon the amended complaint herein, the stipulation between the parties, dated September 16, 1952, the annexed affidavit of Gustav B. Margraf, sworn to September 18, 1952, and all the other papers and proceedings heretofore filed and had herein, plaintiff will move the statutory three-judge District Court to be convened in the above-entitled action at such time and place as the Court may designate for summary judgment granting the relief demanded in the amended complaint, pursuant to Rule 56 of the Rules of Civil Procedure for the United States District Courts, on the ground that there is no genuine issue as to any material fact and that the plaintiff is entitled to a judgment as a matter of law.

Dated: New York, New York, September 22, 1952.

Yours, etc.,

CAHILL, GORDON, ZACHRY,  
& REINDEL,

*Attorneys for Plaintiff.*

By JOHN W. WELCH,

*A member of the firm.*

To: Attorney General of the United States, Washington, D. C.;  
United States Attorney for the Southern District of New York,  
United States Courthouse, Foley Square, New York, N. Y.;  
Federal Communications Commission, Washington, D. C.

408

*Affidavit*

STATE OF NEW YORK,

*County of New York, ss:*

Gustav B. Margraf being duly sworn, deposes and says:

1. I am Vice President and General Attorney of National Broadcasting Company, Inc. (hereinafter called NBC), plaintiff herein.

2. This affidavit is made in support of NBC's motion for summary judgment to incorporate in the record before this Court on such motion the matters hereinafter set forth, all of which are stated on information and belief.

3. On December 30, 1943 Chairman Fly of the Federal Communications Commission wrote to Senator Wheeler, Chairman

of the Senate Interstate Commerce Committee, proposing legislation by Congress which would have changed the language of § 316 of the Communications Act, the statute then covering the broadcast of lottery information, to make it refer expressly to programs which offered prizes to the radio audience. Annexed hereto as Exhibit A is a copy of said letter and its enclosures, as printed, at pages 991 to 993 of a publication of the Government Printing Office entitled "Hearings before the Committee on Interstate Commerce, United States Senate, 78th Congress, 1st Session on S. 814, a bill to amend the Communications Act of 1934, and for other purposes." The suggested legislation was never adopted.

4. In 1939 the Solicitor of the Post Office Department issued two rulings with respect to whether a radio program known as "Mu\$ico" was a lottery. In the first ruling, dated July 1, 1939, the Solicitor advised the Postmaster at Monroe, Wisconsin, that Mu\$ico did not violate the Federal lottery laws. In the second ruling, dated September 29, 1939, the Solicitor advised the Postmaster of Wyoming, Illinois that Mu\$ico did violate the Federal lottery laws.

From time to time the radio program known as "Mu\$ico" has varied in format. In 1949 the attorneys for Columbia Broadcasting System Inc. inquired of the Solicitor of the Post Office Department about the format of the particular programs involved in the two conflicting 1939 rulings. The Solicitor replied in a letter dated May 3, 1949, a true copy of which is annexed hereto as Exhibit B. In the course of such letter he stated that:

"It is likely that if the 'Mu\$ico' plan were submitted to this office today, it would be held, in view of the change reflected in the enclosed notice, not to conflict with the postal lottery laws."

A true copy of the notice which the Solicitor enclosed in his letter of May 3, 1949, and which had appeared in the February 13, 1947, issue of the Postal Bulletin, is annexed hereto as Exhibit

C-1. Such notice reads in part as follows:

410 "All postmasters should carefully note the following with regard to the present policy of the Office of the Solicitor in making rulings on lotteries, gift enterprises, etc., under Section 601, P. L. & R. 1940.

"In order for a prize scheme to be held in violation of this section, it is necessary to show (in addition to the fact that the prizes are awarded by means of lot or chance) that the 'consideration' involves, for example, the payment of money for the purchase of merchandise, chance or admission ticket, or as payment on an account, or requires an expenditure of substantial effort or time. On the other hand, if it is required merely that one's name

be registered at a store in order to be eligible for the prize, consideration is not deemed to be present."

In response to the request for information as to the format of "Mu\$ico" covered by the rulings, the Solicitor also enclosed a copy of the rules of the program, and a true copy of this enclosure is annexed hereto as Exhibit C-2. They reveal that the program was conducted as follows: Cards containing a number of squares in five horizontal rows were distributed free of charge. Each square contained the name of a song, and participants checked off the names as the songs were played in the course of the program. When a participant had completely checked a horizontal row, he became eligible for a prize. In the case of each of three rows, the first participant having completely checked the row correctly and telephoned the station broadcasting the program was awarded a cash prize. Correctly checking all the songs on one of the other two rows entitled the participant to a prize of groceries, upon presentation of the card to a store on the following day. An additional cash prize was awarded to that participant who had correctly checked any row on his card and who submitted the best advertising slogan. On information and belief, the various cards distributed differed in their format so that not all cards provided an equal chance of winning the various prizes.

411 5. On the radio program "Truth and Consequences" a prize of \$10,000 was offered for the correct identification of a well-known person, referred to as "Mr. Heartbeat," described in the following riddle which was repeated in the course of each broadcast of the program:

"Sigh Sigh Pie  
Half prince and pauper I  
I'm drab they say  
But remember fair play  
Ring Ring Hi."

Additional clues to the identity of this person were broadcast on the program each week until identification was made. Listeners were requested during the course of broadcasts to send in postcards bearing their names, addresses and telephone numbers. Listeners were also urged to contribute to the Heart Association, but such a contribution was not a condition of participation in the contest. Each week during the contest three postcards were selected at random and telephone calls were made in the course of the broadcast to the persons named on the cards. If the person called answered the telephone, he was asked to identify "Mr. Heartbeat." No clues were given to him at the time of this telephone call. A correct identification entitled him to the \$10,000 prize; a consolation prize consisting of a set of sterling silver was awarded in case of an incorrect answer.

The Solicitor of the Post Office Department on March 2, 1950, ruled that matter relating to the "Mr. Heartbeat" contest was available in so far as the Postal lottery laws are concerned.

412 A true copy of the letter to the Solicitor requesting the ruling with respect to the "Mr. Heartbeat" contest and a true copy of the Solicitor's ruling with regard thereto are hereto annexed as Exhibits D-1 and D-2 respectively.

6. When the television show "Stop the Music" was instituted, it was desired to identify members of the public who had television sets and might be expected to view such programs; accordingly, members of the public were invited to send in postcards with their names and addresses to indicate that they were interested in becoming contestants. American Broadcasting Company, Inc., made application to the Solicitor of the Post Office Department for a ruling as to whether the proposed arrangements were in violation of the postal lottery statute, United States Code, Title 18, § 1302. A ruling was made by the Solicitor. Exhibit E-1 hereto annexed is a true copy of the letter requesting such ruling and Exhibit E-2 hereto annexed is a true copy of the Solicitor's reply containing such ruling.

7. The Federal Communications Commission in 1940 referred to the Department of Justice of the United States for possible prosecution under § 316 of the Communications Act, certain programs broadcast on various stations. The first such referral was by a letter from Chairman Fly of the Commission to the Attorney General dated February 19, 1940, transmitting documents relating to certain programs broadcast by Stations KWFT and KBST for Mead's Bakery and to a program known as "The Pot of Gold" broadcast over the Red network of NBC. Annexed hereto as Exhibit F-1 is a true copy of the letter of Chairman Fly dated February 19, 1940, and annexed hereto as Exhibits F-2, F-3 and

413 F-4, respectively, are true copies of the documents enclosed with such letter, consisting of an affidavit of Joe B. Carrigan sworn to January 1, 1940, with certain documents attached; a letter from Joe A. Faucett to an inspector of the Federal Communications Commission dated December 11, 1939; and a transcript of one broadcast of the "Pot of Gold" program over Station WRC. Annexed hereto as Exhibit F-5 is a true copy of a press release of the Federal Communications Commission dated February 8, 1940, relating to this referral. Annexed hereto as Exhibit F-6 is a true copy of a letter from the Department of Justice to Chairman Fly dated April 10, 1940, declining to institute prosecution under § 316 of the Communications Act with respect to the "Pot of Gold" and "Mead's Bakery" programs.

On March 29, 1940, Chairman Fly transmitted to the Attorney General information concerning five additional programs for pos-

sible prosecution. On April 29, 1940, the Department of Justice replied to the Commission with respect to each of such programs that it had concluded that no action was warranted by the Department of Justice.

Annexed hereto as Exhibits G-1 and G-2, respectively, are true copies of Chairman Fly's letter of March 29, 1940, with enclosures, relating to "Dixie Treasure Chest," and of the Department of Justice's reply dated April 29, 1940. Annexed hereto as Exhibits H-1 and H-2, respectively, are true copies of Chairman Fly's letter of March 29, 1940, with enclosures, relating to the program called "Sears' Grab Bag," and the Department of Justice's reply of April 29, 1940. Annexed hereto as Exhibits I-1 and I-2,

414 1940, with enclosures, relating to the program entitled "Especially For You," and of the Department of Justice's reply dated April 29, 1940. Annexed hereto as Exhibits J-1 and J-2, respectively, are true copies of Chairman Fly's letter of March 29, 1940 relating to the program entitled "Mu\$ico," and of the Department of Justice's reply of April 29, 1940. Annexed hereto as Exhibits K-1 and K-2, respectively, are true copies of Chairman Fly's letter of March 29, 1940, concerning the program entitled "Songo," and of the Department of Justice's reply of April 29, 1940. The enclosures originally sent with the letters annexed hereto as Exhibits J-1 and K-1 are not available. A transcript of the broadcast of the program "Mu\$ico" on February 16, 1940, over radio station WGN is annexed hereto as Exhibit L. On information and belief the original enclosures sent with the letter, annexed hereto as Exhibit J-1 included a copy of either this transcript or of the transcript of another broadcast substantially identical in format. The program "Songo" to which Exhibits K-1 and K-2 relate is believed to have had a format substantially similar to that of "Mu\$ico" as revealed by Exhibit L, except that "Songo" used cards furnished by the Nevins Drug Co., Philadelphia.

8. Since the rulings and statements of the Post Office Department and of the Department of Justice set out above, there have been no contrary rulings or statements by such authorities and there have been no court decisions contrary thereto.

GUSTAV B. MARGRAF.

Sworn to before me this 18th day of September 1952.

[SEAL]

DORIS M. CROOKER,

*Notary Public.*

Notary Public for the State of New York, No. 60-0807300.

Qualified in Westchester County. Cert. filed in New York County Clerk. Cert. filed with City Register N. Y. County.

Commission expires March 30, 1953.

415 [Exhibit A omitted. Printed side page 44 ante.]

419

*Exhibit B to affidavit*

[COPY]

POST OFFICE DEPARTMENT,  
OFFICE OF THE SOLICITOR,  
*Washington 25, D. C., May 3, 1949.*

MR. SAMUEL I. ROSENMAN,  
ROSENMAN, GOLDMARK, COLIN & KAYE,  
*Attorneys at Law, 165 Broadway,  
New York 6, New York.*

DEAR MR. ROSENMAN: This will acknowledge your letter of April 22, 1949, with further reference to past rulings of this office concerning the plan "Musico." You state that your firm represents clients who are interested in exploiting a radio game which is somewhat similar to, although not identical with, "Musico." You request copies of the letters from the postmasters submitting the plan "Musico" to this office which resulted in conflicting opinions being furnished, so that the "factual differences" in the schemes might be determined by you.

I enclose as information copy of a notice which appeared in the Postal Bulletin of February 13, 1947, describing a change in the view of this office as to the element of consideration in prize schemes. It is likely that if the "Musico" plan were submitted to this office today, it would be held, in view of the change reflected in the enclosed notice, not to conflict with the postal lottery laws. I also enclose for your information a copy of the rules for "Musico".

Very truly yours,

[s] Frank J. Delany,  
FRANK J. DELANY,  
*Solicitor.*

420

*Exhibit C-1 to affidavit*

[COPY]

POST OFFICE DEPARTMENT,  
OFFICE OF THE SOLICITOR,  
*Washington 25, D. C.*

The following notice appeared in the February 13, 1947, issue of the Postal Bulletin:

INSTRUCTIONS OF THE SOLICITOR

RULINGS ON LOTTERIES, GIFT ENTERPRISES, ETC.

All postmasters should carefully note the following with regard to the present policy of the Office of the Solicitor in making rul-



ings on lotteries, gift enterprises, etc., under section 601, P. L. & R., 1940.

In order for a prize scheme to be held in violation of this section, it is necessary to show (in addition to the fact that the prizes awarded by means of lot or chance) that the "consideration" involves, for example, the payment of money for the purchase of merchandise, chance or admission ticket, or as payment on an account, or requires an expenditure of substantial effort or time. On the other hand, if it is required merely that one's name be registered at a store in order to be eligible for the prize, consideration is not deemed to be present.

If postmasters are in doubt as to whether or not matter relating to a particular plan should be treated as nonmailable, they should submit same to this office for a ruling as provided in section 602, P. L. & R., 1940.

SOL-44.

(10-5-48).

421

*Exhibit C-2 to affidavit*

[COPY]

#### "HOW TO WIN MU\$ICO PRIZES

"Follow these easy rules:

"1. Listen every Friday night at 8:30 to 9:00 P. M. to station WMBD (1440 on your dial), Peoria, Illinois.

"2. As each song is played identify it and check title on this MU\$ICO score card. Listen carefully to the radio program and follow instructions as given by the announcer.

"3. The first three rows are chosen for cash prizes. The person who checks off all the songs across ROW ONE correctly and telephones Station WMBD first wins \$5. The first person who checks off all the songs across ROW TWO correctly and is the first to telephone Station WMBD wins \$10. The first person who checks off all the songs in ROW THREE correctly and is the first to telephone Station WMBD wins \$15. Station WMBD's telephone number is 7133.

"4. If you check off all the songs on either ROW FOUR or ROW FIVE you win a large bag of Kroger foods. Take card to your Kroger Store Manager who will check if correct and award prize. Do not telephone Radio Station. Winning food prize cards must be given to Kroger Store Manager on next day—Saturday following this week's broadcast.

"5. Employees of Kroger Grocery & Baking Co. or their families are not eligible for prizes.

"6. If you fill in any row across correctly you may win grand prize of \$20 by simply writing best slogan—I like Kroger Hot-Dated Coffee because

-----  
(Ten words or less)

"Name:

"Address:

"Cards must be given to Kroger Store Manager on next day—Saturday following broadcast. Duplicate prizes awarded in case of ties. Decision of judges is final.

"\* \* \* No purchase is required in order to obtain a MU\$ICO card."

422 [Exhibits D-1 and D-2 omitted. Printed side page 39 ante.]

427 [Exhibits F-1 through F-4 omitted. Printed side page 48 ante.]

444 *Exhibit F-5 to affidavit*

[Press release February 8, 1940]

Federal Communications Commission

WASHINGTON, D. C. (38999)

PRIZE RADIO PROGRAMS CITED

The Federal Communications Commission has transmitted to the Department of Justice the facts concerning the Tums "Pot o' Gold" program, broadcast over the National Broadcasting Company network, and a program advertising Mead's Bakery, recently broadcast by stations KWFT and KBST at Wichita Falls and Big Springs, Texas, respectively.

The Commission has received complaints that these programs, which involve gifts of money by chance, violate Section 316 of the Communications Act which prohibits the broadcasting of "\* \* \* any advertisement, or information concerning any lottery, gift enterprise, or similar scheme \* \* \*."

In turning these cases over to the Department of Justice for such action as that department deems necessary and warranted, the Commission offers any cooperative assistance desired.

445 [Exhibits F-6 through K-2 omitted. Printed side page 62 ante.]

470 [Exhibit L omitted. Printed side page 86 ante.]

[Title omitted.]

[File endorsement omitted.]

*Notice of motion to strike, etc.*

(Filed September 23, 1952)

SIRS: Please take notice that upon the amended complaint herein and upon the annexed affidavit of Benedict P. Cottone, sworn to the 1st day of August, 1952, and upon all the other papers and proceedings heretofore filed and had herein, the undersigned will move the statutory three-judge District Court to be convened in the above-entitled action at such time and place as the Court may designate for an order striking from the amended complaint paragraphs 13, 14 and 16, and for an order dismissing the complaint or, in the alternative, directing that summary judgment be entered in favor of the United States of America and the Federal Communications Commission, defendants, on the grounds stated in the attached motions.

Dated Washington, D. C., September 22, 1952.

William J. Hickey,

WILLIAM J. HICKEY,

*Special Assistant to the Attorney General,*

*Attorney for the United States of America.*

Benedict P. Cottone,

BENEDICT P. COTTONE,

*General Counsel,*

Richard A. Solomon,

RICHARD A. SOLOMON,

*Assistant General Counsel,*

NEWELL A. CLAPP,

*Acting Assistant Attorney General,*

JAMES E. KILDAY,

*Special Assistant to the Attorney General,*

MYLES J. LANE,

*United States Attorney for the Southern District of New York,*

*Attorneys for the United States of America.*

Daniel R. Ohlbaum,

DANIEL R. OHLBAUM,

*Counsel,*

*Attorneys for the Federal Communications Commission.*

[Proof of service omitted in printing.]

495

In United States District Court

[Title omitted.]

[Filed endorsement omitted.]

*Motion to strike and motions to dismiss the complaint or, in the alternative, for summary judgment*

(Filed September 23, 1952)

Upon the amended complaint herein and upon the annexed affidavit of Benedict P. Cottone, sworn to the 1st day of August 1952, and upon all other papers and proceedings heretofore filed and had herein, the defendants in the above-entitled cause move this Court, pursuant to Rule 12 (f) of the Federal Rules of Civil Procedure, that paragraphs 13, 14, and 16 of the amended complaint be stricken from the complaint, and further move that the amended complaint be dismissed or, in the alternative, for summary judgment in their favor.

A. The ground of the Motion to Strike is:

The programs described in paragraphs 13, 14, and 16 of the amended complaint are not within paragraph (b) of the rules in issue and these paragraphs are therefore immaterial and impertinent.

B. The ground of the Motion to Dismiss the complaint is:

Plaintiff fails to state a claim upon which relief can be granted.

C. The ground of the Motion for Summary Judgment is:

The amended complaint together with the exhibits thereto annexed, the affidavit submitted on this motion, and the other papers and proceedings heretofore filed and had herein, show that there is no genuine issue as to any material fact and that defendants

United States of America and the Federal Communications Commission are entitled to a judgment as a matter of law.

496 Dated Washington, D. C., September 22, 1952.

William J. Hickey,

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*Special Assistant to the Attorney General,*

*Attorney for the United States of America.*

Benedict P. Cottone,

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*Assistant General Counsel,*

Daniel R. Ohlbaum

DANIEL R. OHLBAUM,

*Counsel,*

*Attorneys for the Federal Communications Commission.*

NEWELL A. CLAPP,

*Acting Assistant Attorney General,*

JAMES E. KILDAY,

*Special Assistant to the Attorney General,*

MYLES J. LANE,

*United States Attorney for the*

*Southern District of New York,*

*Attorneys for the United States of America.*

497

*Affidavit of Benedict P. Cottone*

DISTRICT OF COLUMBIA,

*City of Washington, ss:*

Benedict P. Cottone, being duly sworn, deposes and says:

1. He is the General Counsel of the Federal Communications Commission, and makes this affidavit in support of the Motion for Summary Judgment made by the United States of America and the Federal Communications Commission, defendants, and in opposition to the Motion for Summary Judgment made by the plaintiff.

2. He is familiar with the Commission's proceedings with respect to the promulgation of rules governing the broadcast of lottery information and that the proceedings included the following:

(a) These proceedings concerning the promulgation of rules governing the broadcast of lottery information were instituted by the Commission's Notice of Proposed Rule Making, released August 5, 1948. Proposed rules interpreting Section 316 of the Communications Act of 1934, as amended, 47 U. S. C. Section 326,

were appended to that Notice. The section referred to prohibited the broadcast of "any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance."

(b) In the light of the prior removal of Section 316 from the Communications Act of 1934, as amended, and recodification of this section as Section 1304 of the United States Criminal Code, 18 U. S. C. Section 1304, the Commission issued, on August 27, 1948, a Supplemental Notice of Proposed Rule Making.

498 (c) Pursuant to the above Notices, briefs and comments were filed with the Commission by the Radio Council of National Advertisers, Inc.; Premium Advertising Associates of America, Inc.; Radio Features, Inc.; Louis G. Cowan, Inc.; Maryland Broadcasting Company, Licensee of Station WITH; Columbia Broadcasting System, Inc.; American Broadcasting Company, Inc.; National Association of Broadcasters; Pierson and Ball; Arthur W. Scharfeld; and National Broadcasting Company, Inc., plaintiff in this action.

(d) On October 19, 1948, oral argument was held before the Commission en banc, in which National Association of Broadcasters; Maryland Broadcasting Company; Radio Features, Inc.; Radio Council of National Advertisers; Columbia Broadcasting System, Inc.; American Broadcasting Company, Inc.; W. Theodore Pierson; Arthur W. Scharfeld; Simons Broadcasting Company; Louis G. Cowan, Inc.; and National Broadcasting Company, Inc., plaintiff in this action, participated.

(e) After consideration of the briefs and comments filed, and of the oral arguments the Commission released, on August 19, 1949, its Report and Order promulgating Sections 3.192, 3.292, and 3.692 of its Rules and Regulations, to enjoin the enforcement of which this action is brought. The Report and Order specified that these rules were to become effective on October 1, 1949. Commissioners Coy, Chairman, Hyde, and Jones did not participate in the adoption of the Report and Order of August 19, 1949, and Commissioner Hennock dissented from its adoption. By its Sixth Report and Order adopted on April 11, 1952 in Dockets No. 8736, et al., the Commission renumbered Section 3.692 as Section 3.656.

(f) The rules appended to the Report and Order of August 19, 1949 provide that no authorization for the operation of a broadcast station will be granted if the applicant proposes to follow or continue to follow a policy of broadcasting or permitting the broadcasting of any program violative of Section 1304 of

499 the United States Criminal Code. The rules further set forth with specificity certain types of programs which the Commission will in any event consider as falling within the provisions of that statute.

(g) This action and a similar action brought in the District Court for the Northern District of Illinois having been commenced, a temporary restraining order suspending the effectiveness of the rules here in issue with respect to the parties in litigation having been issued by the District Court for the Northern District of Illinois on September 13, 1949, and this Court having decided on September 19, 1949 to issue a similar order, the Commission, on September 21, 1949 issued an order postponing the effective date of said rules until at least thirty days after the ultimate determination of these actions.

3. A certified copy of the proceedings before the Commission in Docket 9113 (In re Promulgating of Rules Governing Broadcasting of Lottery Information) is filed herewith and incorporated herein by reference as Exhibit A.

4. Plaintiff broadcasts one or more programs which contain features comprehended by one or more of the rules in issue in this case. After such rules become effective, the failure of plaintiff to discontinue the broadcasting of any or all of such programs would result in setting for hearing applications for renewal of licenses filed by plaintiff and, upon a finding that such programs have been or will continue to be carried, such applications would be denied in accordance with the policy set out in the rules in issue.

5. Attached hereto as Exhibits B and C are true photostatic copies of letters to the Commission dated, respectively, April 4, 1940 and April 11, 1940, and enclosures, received from radio station WGN, Inc. with respect to changes in the format of the radio program called "Musico" which were made prior to April 29, 1940.

6. Affiant submits, in response to the contentions of the plaintiff, that:

500 (a) The Order and the Rules in issue are a proper application of the public policy announced by the Congress of the United States which the Commission must consider in fulfilling its duties under the Communications Act of 1934, as amended, and since denial of a license on the ground that the public interest would not be served by a grant is authorized by Sections 307, 308, 309, and 312 of the Communications Act, the promulgation and enforcement of the Order and Rules in issue are not in contravention of Section 9 (a) of the Administrative Procedure Act;



(b) The Commission in determining the qualifications of an applicant to hold a broadcast authorization may consider the doing of acts which constitute a violation of a criminal statute of the United States which expresses public policy in the broadcasting field as a ground for determining whether the public interest would be served by the grant of a license;

(c) The Order and the Rules in issue are a proper and reasonable exercise of the Commission's functions under the Communications Act of 1934, as amended;

(d) The Order and the Rules are, as a matter of law, a correct interpretation of Section 1304 of the United States Criminal Code;

(e) The Order and the Rules do not violate Section 326 of the Communications Act of 1934, as amended;

(f) The Order and the Rules were issued in accordance with the Commission's Notice of August 27, 1948, after consideration of filed comments and briefs and an oral argument in which all interested parties participated, and were duly published in the Federal Register (14 F. R. 5429, September 1, 1949); accordingly the Order and the Rules in issue were promulgated in accordance with the provisions of Section 4 (a) and (b) of the Administrative Procedure Act;

(g) The Order and the Rules are not inconsistent with the provisions of Sections 5, 7, and 8 of the Administrative Procedure Act; and

501 (h) The Order and the Rules do not violate any of the provisions of the Constitution of the United States or of the Amendments thereto.

7. Affiant submits that Exhibits A, B, and C are relevant to the above issues sought to be raised and that they show that the Order in issue is within the Commission's authority conferred by the Communications Act of 1934, as amended; that it is in accordance with the Commission's Notice of August 27, 1948, pursuant to which an oral argument on which the Order is based was held; that it is proper and reasonable and in the public interest, convenience and necessity; that it is not violative of any of the provisions of the Constitution of the United States; and that there is no genuine issue as to any material fact.

Benedict P. Cottone.

BENEDICT P. COTTONE.

Subscribed and sworn to before me this 1st day of August 1952.

[SEAL]

HELEN A. MARSTON.

Notary Public.

My commission expires April 14, 1957.

238 FCC VS. AMERICAN BROADCASTING CO., INC., ET AL.

502 In United States District Court, Southern District  
of New York

Civil Action No. 52-37

NATIONAL BROADCASTING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA and the FEDERAL COMMUNICATIONS  
COMMISSION, DEFENDANTS

[File endorsement omitted.]

*Final judgment*

(Filed March 11, 1953)

This cause having come on to be heard on plaintiff's motion for summary judgment and on defendants' motion for an order dismissing the amended complaint or, in the alternative, for summary judgment, and on defendants' motion for an order striking paragraphs 13, 14, and 16 of the amended complaint, and the parties having stipulated the facts for the purposes of this action, and the Court having heard the arguments of counsel, and upon consideration thereof and of the briefs and documents filed by the parties, and the majority of the Court having rendered and filed an opinion on February 5, 1953 stating that it was unnecessary to make findings of fact in view of the facts having been stipulated by the parties and setting forth its conclusions of law and the relief to be granted, and a dissenting opinion having been filed on said date, it is hereby

Ordered, adjudged and decreed that plaintiff's motion for summary judgment is granted to the extent that defendants are permanently restrained and enjoined from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of defendant Federal Communications Commission's Rules

503 adopted August 18, 1949 and that the Order of said defendant Federal Communications Commission dated

August 18, 1949 adopting said subdivisions (2), (3) and (4) of paragraph (b) of said Sections 3.192, 3.292 and 3.656 of said Rules is to that extent vacated and set aside; and it is hereby further

Ordered, adjudged and decreed that plaintiff's motion for a summary judgment and an injunction is denied with respect to paragraphs (a) and (b) (1) of said Sections 3.192, 3.292 and 3.656 of said Rules, and that the said Order of said defendant Federal Communications Commission adopting said Rules is sustained with respect to said paragraphs (a) and (b) (1); and it is hereby further

Ordered, adjudged and decreed that defendants' motion to strike paragraphs 13, 14 and 16 of the amended complaint is granted; and it is hereby further

Ordered, adjudged and decreed that defendants' motion to dismiss the amended complaint is denied; and it is hereby further

Ordered, adjudged and decreed that defendants' motion for summary judgment is granted only with respect to paragraphs (a) and (b) (1) of Sections 3.192, 3.292 and 3.656 of said Rules and is in all other respects denied.

Dated: New York, N. Y. March 10th, 1953.

VINCENT L. LIEBELL,  
*District Judge.*

EDWARD WEINFELD,  
*District Judge.*

Dissenting:

CHARLES E. CLARK,  
*Circuit Judge.*

Judgment entered March 11, 1953.

WILLIAM V. COUVELL,  
*Clerk.*

504 The foregoing judgment is hereby consented to as to form and plaintiff may submit same for signature and entry without further notice to defendants.

MYLES J. LANE.

*United States Attorney for the Southern District of New York,  
Attorney for the defendant, United States of America.*

BENEDICT P. COTONE,  
*Attorney for Defendant,  
Federal Communications Commission.*

508 In United States District Court  
Civil Action No. 52-37

[Title omitted.]

*Order allowing appeal*  
(Filed May 8, 1953)

The Federal Communications Commission, defendant herein, having made and filed its petition praying for an appeal to the Supreme Court of the United States from the order of this Court in this cause entered on March 11, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the amended complaint herein or, in the alternative, for summary judgment in defendants' favor, and permanently restrained the Federal Communications Commis-

sion from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of its Rules and Regulations adopted August 18, 1949, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided.

Now, therefore, it is hereby ordered that said appeal be and the same hereby is allowed as prayed for and that the record  
509 on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court.

It is further ordered that citation shall issue in accordance with law.

CHARLES E. CLARK,  
*Judge of the United States Court of  
Appeals for the Second Circuit.*

VINCENT L. LEIBELL,  
*Judge of the United States District Court.*

EDWARD WEINFELD,  
*Judge of the United States District Court.*

Dated May 8th, 1953.

512 In United States District Court

[Title omitted.]

*Assignment of errors and prayer for reversal*

(Filed May 8, 1953)

The Federal Communications Commission, defendant in the above entitled cause, in connection with its appeal to the Supreme Court of the United States, does hereby file the following assignment of errors upon which it will rely in its prosecution of said appeal from the order of the statutory three-judge United States District Court for the Southern District of New York, entered on the 11th day of March, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the complaint or, in the alternative, for summary judgment in defendants' favor, and permanently restrained the Federal Communications Commission from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of its Rules and Regulations adopted August 18, 1949.

Said Court erred:

1. In holding that subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of the Rules and Regulations of the Federal Communications Commission adopted in its Report and Order of August 18, 1949 go beyond, and constitute an incorrect interpretation of, Section 1304, Title 18, United States Code and are an unlawful exercise of the rule making power.

513 2. In granting plaintiff's motion for summary judgment in part by permanently enjoining the Federal Communications Commission from enforcing said subdivisions (2), (3), and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of the Commission's Rules and Regulations and, to that extent, vacating and setting aside the Commission's order adopting said Rules.

3. In denying defendants' motion to dismiss the amended complaint or, in the alternative, for summary judgment in favor of defendants, to the extent that the Court did so in denying the motion to dismiss the amended complaint and in granting defendants' motion for summary judgment in defendants' favor only in respect to paragraphs (a) and (b) (1) of Sections 3.192, 3.292 and 3.656 of the Commission's Rules and Regulations.

Wherefore, defendant Federal Communications Commission prays that the order entered herein on the 11th day of March, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the amended complaint herein or, in the alternative, for summary judgment in defendants' favor and permanently restrained the Federal Communications Commission from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of its Rules and Regulations adopted August 18, 1949, be reversed, and that such other and further relief be granted as to the Court may seem just and proper.

Dated May 8, 1953.

Benedict P. Cottone,  
BENEDICT P. COTTONE,  
*General Counsel,*

J. Roger Wollenberg,  
J. ROGER WOLLENBERG,  
*Assistant General Counsel,*  
Daniel R. Ohlbaum,  
DANIEL R. OHLBAUM,

*Counsel,*

*Attorneys for the Federal Communications Commission.*

516 In United States District Court  
Civil Action No. 52-37

[Title omitted.]

[File endorsement omitted.]

*Order permitting transmission of original documents*

(Filed May 25, 1953)

In accordance with the provisions of the praecipe herein, and pursuant to the motion to transmit certain original documents on the appeal of the above-entitled cause to the Supreme Court of the United States, and upon the annexed consent by the attorneys for the plaintiff, it is

Ordered, that the original of all documents, transcripts, exhibits or other parts of this Court's records in the above-entitled cause, of which there are no copies on file, may all be forwarded in lieu of copies of such documents to the Clerk of the Supreme Court of the United States as part of the transcript of the record on the appeal herein.

CHARLES E. CLARK,  
*Judge of the United States Court of Appeals for the  
Second Circuit.*

VINCENT L. LEIBELL,  
*Judge of the United States District Court.*

EDWARD WEINFELD,  
*Judge of the United States District Court.*

Dated May 21st, 1953.

523 In the United States District Court

Civil Action No. 52-37

[Title omitted.]

[File endorsement omitted.]

*Praecipe*

(Filed May 8, 1953)

*To the Clerk of the United States District Court  
for the Southern District of New York:*

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court, and include in said transcript the following:

1. Complaint of National Broadcasting Company, Inc., filed September 2, 1949, and exhibits thereto.

2. Order to show cause signed by Judge Simon H. Rifkind dated September 15, 1949, together with affidavit of Niles Trammel, sworn to September 15, 1949 and appendices thereto.

3. Order convening three-judge court, entered September 20, 1949.

4. Temporary restraining order signed by Judge Simon H. Rifkind, dated September 23, 1949.

5. Notice of Clerk of the Court that motion for interlocutory injunction was to be heard on October 27, 1949, dated October 17, 1949.

6. Stipulation for postponement of hearing on motion for interlocutory injunction, dated October 17, 1949.

7. Answer of the United States of America and the Federal Communications Commission, together with affidavit of service.

8. Stipulation for filing of amended complaint dated September 16, 1952, and amended complaint of National Broadcasting Company, Inc., together with exhibits thereto, filed September 22, 1952.

524 9. Notice of motion for summary judgment on behalf of National Broadcasting Company, Inc., together with affidavit of Gustav B. Margraf, sworn to September 18, 1952, and exhibits thereto, filed September 22, 1952.

10. Notice of motion and motion to strike paragraphs 13, 14, and 16 of amended complaint, and to dismiss complaint, or for summary judgment on behalf of United States of America and the Federal Communications Commission, together with affidavit of Benedict P. Cottone, sworn to August 1, 1952, and exhibits thereto, filed September 22, 1952.

11. Order convening three-judge court, entered October 30, 1952.

12. Briefs filed on behalf of National Broadcasting Company, Inc., and on behalf of United States of America and the Federal Communications Commission.

13. Opinions of the district court, dated February 5, 1953.

14. Final judgment of the district court, entered March 11, 1953.

15. Petition for appeal.

16. Assignment of errors and prayer for reversal.

17. Statement as to jurisdiction.

18. Order allowing appeal.

19. Statement required by Paragraph 2, Rule 12, of the Rules of the Supreme Court of the United States.

20. Order permitting transmission of original documents.

21. Citation on appeal.

22. Admission of service of papers on appeal.

23. The praecipe with acknowledgment of service and waiver.

24. Clerk's certificate.



Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court of the United States, and is to be filed in the Office of the Clerk of the Supreme Court.

Dated May 8, 1953.

Benedict P. Cottone,  
BENEDICT P. COTTONE,  
*General Counsel,*  
J. Roger Wollenberg,  
J. ROGER WOLLENBERG,  
*Assistant General Counsel,*  
Daniel R. Ohlbaum,  
DANIEL R. OHLBAUM,  
*Counsel,*

*Attorneys for the Federal Communications Commission.*

528

In United States District Court

COLUMBIA BROADCASTING SYSTEM, INC., PLAINTIFF

v.

THE UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS COMMISSION, DEFENDANTS

Civil Action No. 52-38

Stipulation for filing amended complaint—filed September 23, 1952

[File endorsement omitted.]

It is hereby stipulated and agreed by and between the parties hereto that:

1. Plaintiff may serve and file an amended complaint herein in the form of that annexed hereto as Exhibit 1.

2. For the purposes of any motions which plaintiff or defendants or both may bring for summary judgment (a) all the allegations of fact set forth in said amended complaint shall be taken as admitted by the defendants, and (b) facts set forth in the amended complaints in the companion actions of National Broadcasting Company v. FCC, Civil Action No. 52-37, and American Broadcasting Company v. FCC, Civil Action No. 52-24, and in the affidavits, or any of them, filed in either of said companion actions by either plaintiffs or defendants therein, and deemed admitted in those actions shall be deemed admitted and part of the record in this action.

529 3. No objection will be raised by defendants to the amended complaint or to the affidavit of Max Freund annexed to plaintiff's notice of motion for summary judgment.

ment herein on the ground that the sources of information or the grounds for belief as to the matters set forth upon information and belief are not revealed therein.

Dated: New York, N. Y., September 22, 1952.

ROSENMAN, GOLDMARK, COLIN & KAYE,  
*Attorneys for Plaintiff.*

WILLIAM J. HICKEY,  
*Attorney for Defendant, United States of America,*  
MYLES J. LANE,  
*United States Attorney for the Southern District*  
*of New York,*

DANIEL R. OHLBAUM,  
*Attorney for Defendant,*  
*Federal Communications Commission.*

So ordered: September 23, 1952.

EDWARD A. CONGER,  
*U. S. D. J.*

530

In United States District Court

Civil Action No. 52-38

[Title omitted.]

*Amended complaint*

(Filed September 23, 1952)

Plaintiff, by its attorneys, Rosenman, Goldmark, Colin & Kaye, for its amended complaint herein, alleges:

First: This is an action to set aside, annul and permanently enjoin the enforcement of an Order of the Federal Communications Commission (hereinafter referred to as "the Commission") issued on August 18, 1949, and the Rules thereby adopted and designated as Sections 3.192, 3.292 and 3.692. This action is brought pursuant to the provisions of Section 402 (a) of the Communications Act of 1934, as amended (ch. 652, 48 Stat. 1093; 47 U. S. C. Sec. 402 (a), as amended by ch. 139, Pub. Law 72, Sec. 132, approved May 24, 1949), of Sections 1336, 1398, 2284, 2321-2325, inclusive, of Title 28 United States Code, and of Section 10 of the Administrative Procedure Act (ch. 324, Sec. 10, 60 Stat. 243; 5 U. S. C. Sec. 1009).

Second: Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New York, and has its residence and principal office in the City, County and State of New York, and within the Southern District of New York.

531 Third: The Commission, created by the Communications Act of 1934, is charged with executing and enforcing the provisions of that law, as amended.

Fourth: Plaintiff is and for years has been engaged principally in the business of operating a nationwide radio network and a television network. Plaintiff also is the owner, operator and licensee of five amplitude modulation or standard broadcast radio stations, four frequency modulation (FM) broadcast radio stations and one television (TV) station. Plaintiff also holds a construction permit for a second television station, which is being operated under special temporary authorization. A wholly owned subsidiary of plaintiff is the owner, operator and licensee of one standard broadcast radio station and is the holder of a construction permit for one FM station, which FM station is being operated under special temporary authorization.

Fifth: Plaintiff's network business consists of the furnishing of programs to radio and television stations for simultaneous, delayed or other broadcast by such stations. Plaintiff furnishes radio network programs to more than 200 standard broadcasting stations and its television network programs to more than 60 television (TV) stations, pursuant to contracts. Said stations are known as network affiliates. In addition, plaintiff also broadcasts said programs over its own and its subsidiary's stations, which are part of said networks.

Sixth: Programs broadcast by radio or television stations are of two types: commercial and sustaining. Commercial programs are those sponsored by an advertiser which pays for the broadcast thereof. Sustaining programs are not sponsored or paid for by any advertiser.

532 Seventh: Plaintiff, in its network operations, furnishes sustaining programs to its network stations. It does so without charge except in the case of certain types of television sustaining programs. It also furnishes said stations with all commercial programs which a sponsor wishes them to broadcast and which the stations accept for broadcast. The sponsor pays plaintiff and plaintiff in turn pays the stations as provided in its affiliation contracts.

Eighth: Among other programs, plaintiff invested large sums of money in the network programs known as "Sing It Again" and "Hit the Jackpot" which involve the award of prizes.

Ninth: (a) Between May 1948 and October 1949, "Sing It Again" was broadcast by radio only on a sustaining basis. In October 1949, one-quarter of the hourly radio broadcast was sponsored and thereafter one or more of the quarterly hour periods of the program were broadcast commercially. In October 1950, "Sing It Again" was also presented over television on a sponsored basis. "Sing It Again" was thus a one hour program, broadcast weekly simultaneously over radio and television stations. "Sing It Again" was discontinued on radio and television on June 23, 1951.

Plaintiff received each week from sponsors in excess of \$16,000 for the program itself plus in excess of \$15,000 for the broadcast and telecast of said program. Plaintiff's weekly profit was very substantial.

(b) "Hit the Jackpot," which was a weekly program on radio only, was first broadcast on May 9, 1948 on a sustaining basis. It was broadcast commercially from June 29, 1948 to December 27, 1949, and from May 28, 1950, to July 30, 1950. Said program was discontinued on October 1950. Plaintiff received each week from the sponsor in excess of \$2,000 for the program itself and \$1,900 for the broadcast thereof. Plaintiff's weekly profit was very substantial.

533 Tenth: (a) The facts as to "Sing It Again," were as follows:

Performers sang a popular song and then repeated it but this time with parody lyrics describing some person, place, event, or the like. Contestants, selected at random from phone books, were called on the telephone during the program. The contestants paid nothing in order to compete. They were asked to identify the person, place or event described by the parody lyrics which they heard over the radio. If the contestant answered correctly, he won a prize and then had a chance to identify a secret voice. The secret voice sang giving clues as to his or her identity. Additional clues were also given on the program and on other programs. The person identifying the secret voice won a main prize. The main prize was increased week by week until the proper identification was made.

If the contestant failed to identify the person referred to in the parody lyrics he was given a prize of lesser value (hereinafter referred to as a "consolation prize"), and then another contestant in the studio, chosen by lot by the number on the stub of his admission ticket, was given the opportunity to answer and win a prize. He was awarded no prize if he answered incorrectly. The contestant in the studio had no opportunity to try for the mystery voice main prizes. The studio contestants were admitted to the studio without charge and paid nothing in order to compete.

(b) The facts as to "Hit The Jackpot" were as follows:

Studio contestants were selected by prebroadcast interviews. Two contestants—one called "Climber" and the other "Challenger"—played at one time. Climber was asked a question. After he answered, Challenger was asked whether he accepted the answer as correct or whether he challenged it. If Climber  
534 answered the question correctly and Challenger accepted the answer, Climber moved up one of four steps leading to the opportunity to win a large prize and Challenger stayed in the game. If Climber's answer was correct but Challenger challenged

it, Climber moved up one step and Challenger dropped out, to be replaced by a new Challenger. If Climber answered incorrectly and Challenger challenged the answer, Climber dropped out of the game and Challenger took his place at whatever step the Climber was at. If Climber answered wrongly and Challenger accepted his answer as correct, Climber advanced one step and Challenger dropped out. After advancing three steps, the contestant was required to answer a fourth question correctly. If he succeeded in so doing, he obtained the right to try to win the main prize. He won the main prize if he identified a so-called secret saying which was acted or sounded out through recordings. Each contestant winning a step also was awarded a prize.

Each time a studio contestant tried to identify the secret saying and failed, a nonstudio contestant (selected by chance from postcards sent in) was called at his home and given an opportunity to identify the secret saying as he listened to it over the radio or telephone, depending on the time zone in which he was located. If he failed, then a second non-studio contestant was called at his home and similarly asked to identify the secret saying. If the two nonstudio contestants failed, then the contest was resumed with studio contestants participating again.

The secret saying was kept on the program with new clues added from week to week until it was correctly identified by a contestant. The main prize was increased each week until a contestant won.

The contestants—studio and nonstudio—paid nothing in order to compete.

535 (c) Annexed to this amended complaint as Exhibit I is a typewritten transcription of "Sing It Again" as broadcast on August 27, 1949. Annexed hereto as Exhibit II is a typewritten transcription of "Hit the Jackpot" as broadcast on August 23, 1949.

Insofar as the Order and Rules referred to in Paragraph Fourteenth of this Amended Complaint are concerned said transcriptions are typical of all broadcasts of said programs.

(d) This Paragraph Tenth sets forth everything which transpired between plaintiff and sponsors on the one hand and contestants and listening and viewing audiences on the other hand with respect to said programs "Sing It Again" and "Hit The Jackpot".

Eleventh: (a) Plaintiff's investment in said programs "Sing It Again" and "Hit The Jackpot" amounted to hundreds of thousands of dollars.

Said programs, and each of them, constituted valuable property worth hundreds of thousands of dollars.

Said programs, and each of them, were popular with the public and had great good will. The radio audience for each of the said programs listed above was in the millions and the television audience for "Sing It Again" in the tens of thousands.

Said programs and, in general, programs of their type, have wide audience appeal and are of great value to plaintiff.

Sponsors have discontinued said programs for the reason, among others, upon information and belief, that the Commission's Rules (referred to in Paragraph Fourteenth of this amended complaint) have declared said programs to be illegal as violative of Section 1304 of the United States Criminal Code

(18 U. S. C. § 1304). In addition, plaintiff, upon information and belief, for the same reason has been unable to attract new sponsors for other like programs which come within the proscription of the Rules.

(b) The success of a network in attracting sponsors depends, in part, upon the number of people who listen to or view its programs.

Twelfth: Neither "Sing It Again" nor "Hit The Jackpot" has ever been adjudicated by any court to be in violation of Section 1304 of the United States Criminal Code, or of any criminal statute and no criminal proceeding has ever been instituted against plaintiff or any person, firm or corporation on the ground that said programs or any of them violate a criminal statute, federal or state. On information and belief: No program similar to said programs has ever been adjudicated by any court to be in violation of Section 1304 of the United States Criminal Code, or any criminal statute, and no criminal proceeding has ever been instituted against any person, firm or corporation on the ground that any program similar to said programs violates a criminal statute, state or federal.

Thirteenth: There has been no finding of fact by the Commission that said program "Sing It Again" and "Hit The Jackpot" and programs similar thereto have had a demoralizing or other deleterious, harmful or evil effect on the public.

Fourteenth: The Commission on August 5, 1948 issued a notice (13 Fed. Reg. 4748) entitled "In the Matter of Promulgation of Rules Governing Programs Prohibited by Section 316 of the Communications Act—," a copy of which is annexed hereto as Exhibit III, and on August 27, 1948 it issued a Supplemental Notice of Proposed Rule Making (13 Fed. Reg. 5075), a copy of which is annexed hereto as Exhibit IV.

537 Pursuant to said notices the Commission, sitting en banc, heard oral argument on October 19, 1948. Plaintiff, with the permission of the Commission, having theretofore filed a

brief, appeared and made an oral argument in opposition. No evidence was ordered to be taken by the Commission nor was any evidence heard by the Commission.

The Commission issued its Report and Order with Rules attached thereto on August 18, 1949, a copy of each of which is hereto annexed in Exhibit V. In adopting said Report and Order with Rules attached, the Commission acted by four of its members, one of whom dissented.

Fifteenth: By the terms of said Order, the Rules were adopted effective October 1, 1949. Said Rules attached to said Report and Order provide:

**"LOTTERIES AND GIVE-AWAY PROGRAMS.—**(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting 'the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.' (See 18 U. S. C. Sec. 1304.)

"(b) The determination whether a particular program comes within the provisions of subsection (a) depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of subsection (a) if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize:

"(1) such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question; or

"(2) such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

"(3) such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous program will be considered as an aid in answering the question correctly; or



"(4) such winner or winners are required to answer the phone in a prescribed manner or with a prescribed phrase, or are required to write a letter in a prescribed manner or containing a prescribed phrase, if the prescribed manner of answering the phone or writing the letter or the prescribed phrase to be used over the phone or in the letter (or in aid in ascertaining the prescribed phrase or the prescribed manner of answering the phone or writing the letter) is, or has been, broadcast over the station in question."

Sixteenth: All stations operate solely by virtue of licenses issued by the Commission. Licenses are granted by the Commission for a term of three years for standard and frequency modulation stations and one year for television stations.

The licenses of plaintiff's five standard stations will expire as follows:

WCBS (New York)-----	November 1, 1952.
WBBM (Chicago)-----	November 1, 1952.
WEEL (Boston)-----	April 1, 1954.
KMOX (St. Louis)-----	May 1, 1954.
KNX (Los Angeles)-----	May 1, 1954.

The licenses of plaintiff's four frequency modulation stations will expire as follows:

539 WCBS-FM (New York)-----	June 1, 1954.
WEEL-FM (Boston)-----	December 1, 1952.
WBBM-FM (Chicago)-----	March 1, 1953.
KNX-FM (Los Angeles)-----	December 1, 1953.

WCBS-TV (Chrysler Building New York) will expire on June 2, 1953. WCBS-TV (Empire State Building, New York) is being operated pursuant to special temporary authorization which has been extended from time to time pending issuance of license for operation at that site.

Plaintiff is also the holder of a construction permit for television station KNXT at Los Angeles, California. Said station is being currently operated on a commercial basis pursuant to a special temporary authorization which will expire January 20, 1953.

The licenses of KCBS (San Francisco), a standard broadcast station owned by plaintiff's wholly-owned subsidiary, Columbia Broadcasting System, Inc. of California, expires on November 11, 1952. Plaintiff's said subsidiary also operates KCBS-FM pursuant to special temporary authorization which will expire on March 1, 1953.

The licenses of all radio network stations affiliated with plaintiff will expire within less than three years of the date hereof. The licenses of certain of said affiliated stations will expire during 1952,

and the licenses of certain others of said affiliated stations will expire in 1953.

Plaintiff's stations have a value of many millions of dollars which will be destroyed if its licenses therefor are not renewed. The stations owned by plaintiff's wholly-owned subsidiary likewise have great value which will be destroyed if the licenses therefor are not renewed. So, also, plaintiff's affiliates have very substantial investments in their stations which investments will be destroyed if the licenses of said station are not renewed.

540     Seventeenth: Programs involving the award of a prize to a person whose selection is dependent in whole or in part on chance and which are similar in character to those described in paragraphs eighth to tenth, inclusive, of this amended complaint have been broadcast for about a decade to the knowledge of the Federal Communications Commission. During said period the licenses of literally thousands of stations (including those owned by plaintiff, its subsidiary and affiliates referred to in the amended complaint) broadcasting such programs were renewed by the Commission which knew of the past broadcast of such programs by said stations and that they intended to continue the broadcast thereof.

Eighteenth: This action was instituted on or about the 2d day of September, 1949. By order to show cause signed by Judge Simon H. Rifkind on September 15, 1949, plaintiff moved for injunction pendente lite, and for a temporary restraining order pending determination of the foregoing motion, staying the enforcement of said Order and Rules pending a final determination and decree herein. Said motion for temporary restraint was heard before Judge Rifkind on September 19, 1949, who made an order on September 23, 1949, granting said motion.

On or about the 21st day of September, 1949, the Commission released the following order:

"At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of September 1949:

"It appearing, That Sections 3.192, 3.292 and 3.692 of the Commission's Rules and Regulations will become effective on October 1, 1949, pursuant to the Report and Order of August 18, 1949 by which they were adopted; and

541     "It further appearing, That District Courts in Illinois and New York have issued temporary restraining orders suspending the effectiveness of the rules with respect to the parties to litigation in such courts who have brought actions to enjoin the rules and that the Commission believes that all parties who might be affected by the rules should be placed on an equal footing by

postponing the effective date of the rules until the final determination of pending litigation involving their validity; and

"It further appearing, That the authority for the postponement made herein is contained in Sections 4 (i), 303 (r) and 309 of the Communications Act of 1934, as amended; and

"It further appearing, That compliance with the public notice requirements of Section 4 (a) of the Administrative Procedure Act is unnecessary in view of the fact that the rules are not yet in effect and this order merely postpones the effective date;

"It is ordered, That, effective immediately, the effective date of Sections 3.192, 3.292 and 3.692 of the Commission's Rules is hereby postponed until a date to be fixed by further order, which shall be at least thirty days after a final decision by the Supreme Court of the United States, or thirty days after the time within which an appeal to the Supreme Court may be taken has expired without such an appeal being taken, in pending litigation with respect to these rules."

Nineteenth: Beginning with the effective date of the Rules, the Commission will consider "Sing It Again" and "Hit The Jackpot" and programs similar thereto as coming within the provisions of subsections (a) and (b) of its said Rules and therefore in violation of Section 1304 of the Criminal Code (18 U. S. C., Sec. 1304) and it will not renew the licenses of plaintiff's and of its said subsidiary's stations and of its affiliated stations when they come up for renewal and it will deny all applications made by plaintiff, its said subsidiary or its affiliated stations for construction permits, licenses or other authorizations for the operation of radio or television stations, unless plaintiff, its said subsidiary and its affiliated stations refrain from broadcasting  
542 such programs. In addition, the Commission has the power to revoke, and might revoke, the licenses of said stations prior to their expiration, if said stations were to broadcast said programs or programs similar thereto after the effective date of said Rules.

Plaintiff, its said subsidiary and its affiliates, after the effective date of the Rules, will therefore be unable to broadcast said programs and similar programs which come within the confines of said Order and Rules, although plaintiff desires to do so.

Twentieth: The aforesaid Order and Rules issued on August 18, 1949 are illegal and void and beyond the power, authority and jurisdiction of the Commission for the reasons that:

(a) They incorrectly interpret and apply Section 1304 of the United States Criminal Code;

(b) They are arbitrary, capricious, constitute an abuse of discretion and not in accordance with law;

(c) They are contrary to and in violation of the First Amendment to the Constitution of the United States;

(d) They deprive plaintiff of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States;

(e) They subject plaintiff to punishment without a hearing by any court in violation of Article III of the Constitution of the United States;

(f) They subject plaintiff to punishment without trial by jury in violation of the Sixth Amendment to the Constitution of the United States;

(g) They subject plaintiff to punishment without a judicial trial in violation of Article I, §, Clause 3 of the Constitution of the United States;

(h) They are contrary to Section 326 of the Communications Act of 1934, as amended;

(i) They are contrary to Sections 4 (b), 5 (a), (b) and (c), 7 (a), (c) and (d), 8 (a) and (b), and 9 (a) of the Administrative Procedure Act;

(j) The Commission has no jurisdiction, power or authority to promulgate or effectuate an order or rules interpreting Section 1304 of the United States Criminal Code;

(k) The Commission has no jurisdiction, power or authority to promulgate or effectuate an order or rules imposing or threatening to impose sanctions and penalties for conduct allegedly in violation of but not adjudicated by any Court to be a violation of Section 1304 of the United States Criminal Code;

(l) The Commission has no jurisdiction, power or authority to promulgate or effectuate an order or rules imposing penalties or sanctions for alleged violation of Section 1304 of the United States Criminal Code in excess of or in addition to those expressly provided for by Congress therein;

(m) The Commission has no jurisdiction, power or authority to promulgate or effectuate an order or rules pursuant to which applications for station licenses or for the renewal thereof are automatically denied on the sole basis of a violation of the Commission's interpretation of Section 1304 of the United States Criminal Code;

(n) The Commission has no jurisdiction, power or authority to promulgate or effectuate an order or rules pursuant to which applications for station licenses or for the renewal thereof are automatically to be denied on the sole basis of an unadjudicated violation of Section 1304 of the United States Criminal Code; and/or

(o) The Commission has usurped the Power of Congress, if any there be, to determine the contents of radio and television programs and what sanctions and other penalties shall be imposed for violations of a statute.

Twenty-first: Plaintiff has no adequate remedy at law. Unless said Order and Rules issued on August 18, 1949, be set aside, annulled and the enforcement thereof enjoined, plaintiff and its affiliates must refrain from broadcasting all said programs referred to in paragraphs Eighth to Tenth hereof and programs similar thereto. Plaintiff has suffered and will continue to suffer great loss of revenues, the destruction of its valuable investments and property rights in said programs and the loss of the good will and audiences built up by said programs, all to its irreparable damage. In addition, plaintiff will be unable to broadcast other like programs which come within the proscription of the rules although not violative of Section 1304 of the United States Criminal Code. Plaintiff will thus be barred from broadcasting programs which have wide audience appeal and which furnish substantial revenues.

Wherefore, plaintiff prays:

1. That a court, constituted as required by Title 28, United States Code, Sections 2284 and 2325, be convened, hear and determine this action;

545 2. That said court grant a temporary or interlocutory injunction restraining and enjoining, pending final hearing and determination herein, the enforcement, operation or execution, in whole or in part, of said Order of the Commission issued August 18, 1949, and the Rules adopted thereby;

3. That said court, after final hearing, enter judgment permanently enjoining the enforcement of, setting aside and annulling said Order of the Commission issued August 18, 1949, and the Rules adopted thereby; and

4. That plaintiff have such other further relief as the court may deem just and equitable.

ROSENMAN GOLDMARK COLIN & KAYE,

575 Madison Avenue, New York 22, N. Y.

Attorneys for Columbia Broadcasting System, Inc.,  
Plaintiff.

By MAX FREUND, A Partner.

Dated: New York, N. Y., September 22, 1952.

546 [Duly sworn to by Richard Salant; jurat omitted in printing.]

THE COLUMBIA BROADCASTING SYSTEM

SING IT AGAIN

Saturday, August 27, 1949, 10:00-11:00 p. m.

SEYMOUR. Hold the phone, America. It's time to "Sing It Again."

This is Dan Seymour. I'm going to be making calls over the country during the next hour, giving you at home a chance to win the radio's biggest jackpot, \$53,000 in treasure and cash, if you can identify our new phantom voice.

VOICE.

Do you recognize this voice? Just listen.  
Stephen wrote,  
And I quote,  
Blandings paying more,  
Wolves will bay,  
Donkeys bray,  
A phantom walks the floor.

SEYMOUR.

Stephen wrote,  
And I quote,  
Blandings paying more,  
Wolves will bay.  
Donkeys bray,  
A phantom walks the floor.

Yes. That's the riddle the phantom's sayings, and tonight, his name is worth \$53,000. So, stay by that radio. Stay by that phone. This is Dan Seymour saying—I may call you \* \* \* music \* \* \*

CHORUS. Sing It Again—Sing It Again, etc.

ANNOUNCER. Yes. It's the musical guessing game—  
548 "Sing It Again," with Allan Dale, Bob Howard, Rosemary Cluny pinchhitting for Eugenie Bayard, the Riddles, and Ray Block's orchestra. And here's the man with the cross-country phone, Dan Seymour.

SEYMOUR. Thank you. Thank you, Bern Bennett, and welcome everyone to "Sing It Again," where our jackpot is worth \$53,000. A sensational award that you might win tonight by naming our phantom voice. It doesn't matter where you live or who you

are. You may be small in the subway, or tall in the saddle. You may be from a big city or small town. Anywhere in the good old U. S. A. Because on "Sing It Again," big or small, we call them all.

Tonight may be your night to get that all-important telephone call. Yes. \$53,000 in prizes and cash may be yours within the very next hour. So remember that clue we gave you last week.

In a famous song—you'll note,  
A fortune hanging by a quote!

O. K. That's the clue. And now let's get those phone calls going. The numbers are chosen at random from our giant collection of United States telephone directories and the riddle ring comes without warning. Yes. The calls begin as we begin to "Sing It Again."

(Music.)

And here's how you go after that phantom treasure. First we sing a popular song then we Sing It Again, naming a person, place or thing. Give me the right answer if I call you and you've won your chance to identify our phantom voice. Name him and the \$28,000 in prizes is yours, in addition you can win \$25,000 in cold, hard cash, if you can answer one question about him.

Yes. That's how we play Sing It Again. And now here's Allan Dale to start us off with a story of the little fish in 549 the big pond.

ALLAN DALE and Chorus. Little Fish In the Big Pond  
\* \* \* etc. \* \* \*

SEYMOUR. The riddle words describe a little guy, with a big punch. You guess who we mean and Allan will "Sing It Again."

DALE. \* \* \* drowned out by music \* \* \* indistinct \* \* \*

SEYMOUR. O. K. Operator. Who is going to start Sing It Again this evening, please?

OPERATOR. \* \* \* indistinct \* \* \*

SEYMOUR. Mrs. Annie Clark of Salt Lake City, Utah. Hello, Mrs. Clark. This is Dan Seymour in New York, and here's a chance for you to win a beautiful smartly styled Chiquita suede jacket from Tel-Jacks, of the San Fernando Valley, of California, originators of symphonies in suede.

Ah, but first, Mrs. Clark you have to name that sugary ray for us.

Mrs. CLARK. \* \* \*

SEYMOUR. You don't have any idea who it is, eh? Oh, I'm sorry you don't, Mrs. Clark, but we're going to send you out there in Salt Lake City an Evans golden carry-all with compact, lipstick and compartment for cigarettes and all our thanks for helping us play "Sing It Again" from Salt Lake City.



And, so as is our custom on "Sing It Again"—we now turn to a studio audience contestant, Bern. His name that is Mr. George D. Gregario, from Brooklyn, N. Y. \* \* \* cheers \* \* \*

All right, George, uphold the honor of Brooklyn. Just name that sugary ray quickly will you?

GREGARIO. \* \* \* no voice \* \* \*

SEYMOUR. Oh, audience. \* \* \* shouts \* \* \* indistinct \* \* \*

Sugar Ray Robinson. We said in the parody that "that  
550 little ray goes biff bang." That Ray's an iron man because he flattened Steve Beloise last week, and then we added "that Sugar Ray does O. K. making lots of sugar too; he's really great when this welterweight appears."

I'm sorry. Sugar Ray Robinson. No prize. So let's go after another one, Ray. \* \* \* music \* \* \*

And it's time to "Sing It Again," \* \* \* indistinct Bob Howard so bring you a great old tune revived by Al Jolson and just as good as ever. It's Toot Toot Tootsie.

HOWARD. \* \* \* sings \* \* \* Toot Toot Tootsie \* \* \* etc.

SEYMOUR. Second time around Bob tells you about a movie star who leads a dog's life. See if you can guess the star and Bob, you Sing It Again.

#### HOWARD

Woof, woof, woof, he's a star,  
In Hills of Home—he went far.  
No other star barks louder,  
The only star who has to make up with flea powder,  
Woof, woof, woof, he can roam,  
How they beg him to come home,  
You dog you. \* \* \* [laughter] \* \* \*  
\* \* \* indistinct \* \* \*

Something to see.

They said here's an Oscar  
And they gave him a \* \* \* indistinct \* \* \*  
Woof, woof \* \* \* come out [laughter].  
He's a \* \* \* indistinct \* \* \* [laughter].  
\* \* \* indistinct \* \* \* [laughter]

SEYMOUR. Hello, operator. Who's going to play "Sing It Again" now, please? \* \* \* [laughter continuing].

Mrs. Edward Carter, of Daytonville, Maryland. Hello, Mrs. Carter. This is Dan Seymour in New York. I hope you  
551 answer this because we've got a mighty anxious studio contestant just waiting to take her place up here. You can win the Evans showcase; an ensemble of table lighters, one for every room in the house and the sensationally new Evans automatic

pocket lighter, one for *him* and one for *her*, if you just tell us the name of that picture land pooch.

Mrs. CARTER. \* \* \* No sound \* \* \*

SEYMOUR. You don't know, Mrs. Carter. \* \* \* [laughter—continuous]. Mrs. Carter \* \* \* words drowned out by laughter \* \* \* indistinct \* \* \* [laughter]. We're going to send you an Everlast hand-forged aluminum ice bucket and all our thanks for helping us \* \* \* [Laughter in background throughout] \* \* \* play *Sing It Again* from Daytonville, Md. Well, now, ladies and gentlemen, of our studio audience, I must explain some of the laughter in our studio. This studio contestant has been trying—for the last 2 or 3 minutes—to get everybody in the audience to tell her the answer to this \* \* \* [laughter]. So, Bern, will you please introduce her to our nationwide audience as well as the studio audience?

BENNETT. Yes, Dan. Here is Mrs. Peggy Holland from New York City.

SEYMOUR. Mrs. Holland Miss Holland—be very quiet and at ease up there. Can you give us the name of that picture *Land Pooch*?

HOLLAND. Is that Laddie or Lassie?

SEYMOUR. Lassie. Yes, it is \* \* \* music \* \* \* And the lady almost fainted. \* \* \* [Loud laughter—continuous]. Well, we have a happy studio contestant but no one got a chance at the \$53,000 award that time. But you know someone somewhere is still in line to win our \$28,000 in prizes and \$25,000 in cold, hard cash.

And so here are Bern Bennett and Art Hanes to tell you about some of those wonderful prizes. Go ahead, fellas.

VOICE. A prize for the winner and his family to go deer 552 hunting in Nevada this year or next. You can drive out to

Nevada and be guests of Newton Crumley at one of his famous hotels in Elko, Nevada, either the Ranch Inn or the Commercial Hotel. During your stay you can deer hunt in the famous Ruby Mts. and—lucky or not in your deer hunt—Mr. Newton Crumley will always have ready one of the famous Crumley steers for you to take home; enough steaks to last right through a winter, the same quality meat served at the Ranch Inn and the Commercial Hotel; a nationally famous, nationally guaranteed \$2,000 Columbia diamond ring. Columbia diamond rings are featured by better jewelers from coast to coast and are truly gems for lady America and to match that exquisite ladies' diamond ring, a nationally guaranteed \$500.00 Columbia man's ring; from Leo Stein, the glamour furrier of America, a luxurious mink stole, the last word in fashion and beauty. These carefully selected furs will give you many years of fine wear and it's all yours with

the compliments and best wishes of Leo Stein. An exquisite set of 2 luxurious Longines watches, products of the Longines-Wittnauer Watch Company, makers of the world's most honored watch.

For her—a magnificent Longines \$1,400 diamond and platinum bracelet watch and for him—a handsome Longines platinum watch with diamond dial, valued at over \$500.00; a beautiful Stromberg-Carlson, radio and phonograph combination with AM and FM, plus \$500.00 worth of Stromberg-Carlson table model radio sets, to be distributed in your name among veterans' hospitals. There's nothing finer than a Stromberg-Carlson.

And from J. Keil—Fifth Avenue—a 14-karat solid gold men's jewelry set, consisting of J. Keil's newest broad-flex expansion watch band, with diamond-studded tie clip and cuff links to match.

From Elkhart, Indiana, the home of the world's largest drum manufacturers, medie drums, you'll receive a complete \* \* \* ? finished outfit including all accessories, the same set played by Sing It Again's ace drummerman, Speks Powell. \* \* \* (cheers)

\* \* \* words drowned out by cheering. \* \* \* workshop \* \* \* indistinct \* \* \* ? complete line of shop master tools, designed by engineering experts and including benchsaw, handsaw, drill press lathe and many other woodworking tools, all products of Shop Master, Minneapolis, Minnesota.

Two Delta provincial bedroom suites of authentic beachwood and velvet gold-tone fruit-wood finish by Delta Brothers, manufacturing company, of Henderson, Kentucky.

From the Hastings Metal Tile Products Company, Hastings, Michigan, makers of aluma-tile—a completely equipped modern bathroom tile with Hastings aluma-tile; gleaming aluminum wall tiles and your choice of 14 colors plus enough aluma- \* \* \* indistinct \* \* \* and awnings for every window of your home.

From Chattanooga, Tennessee, you'll receive a complete famous Chavalier furniture—sto-a-way, right-o-way and dressa-way along with a beautiful cedar hope chest, the gift of a lifetime.

From Springfield, Tennessee, we've arranged to fill this chest with luxurious Springfield virgin wool blankets made of the finest blanket wools from Springfield Woolen Mills.

A Modern Kelvinator home deep freezer \* \* \* ? with 6 cubic foot capacity which \* \* \* ? keep filled with a 3-year's supply of Snow Crop high quality fresh frozen foods; a famous Latox ? warm air heating system designed especially for your home by the Lenox Furnace Company, world's largest manufacturers and engineers of warm air heating systems, plus an electro-static air cleaning unit to be connected with your heating system for year-round-use to diminish or remove dirt, dust, pollen and tobacco smoke.

And finally, a prize to bring endless enjoyment and pride to the whole family—a beautiful new Nash Ambassador air flight 4-door sedan, the most modern of America's fine cars.

Of course, that's only half the treasure you have a chance to win. There's \$25,000 in cash as well. And you may get  
554 your chance at the \$53,000 award with the call that's starting out right now from the switchboard, so go ahead, Ray.  
\* \* \* music \* \* \*

VOICE. While Sing It Again's regular girl friend Eugenie Bayard is off for Canada for an important theatrical engagement, we've invited the shining new singing discovery, Rosemary Cluny, to supply the feminine charm, and here she is with her Columbia recording hit \* \* \* Cabaret.

CLUNY. \* \* \* singing \* \* \*

SEYMOUR. Our riddle verse is all about a gal who brought the Hill Billies to Park Avenue. See if you know her and Rosemary Cluny will sing it again.

\* \* \* a change from the hills of Park Avenue,

\* \* \* tunes like them gals in the Ozarks do.

She did right well by singing a feudin song,  
That sure made a fuss.

Feudin, fightin, and a fussin,

Let's all that's going on a-fussin,

Don't like them ornery neighbors down by the creek,

We'll be plum out of neighbors next week.

\* \* \* sings about \* \* \* indistinct \* \* \* and his \* \* \* ?

She's a part of a new mountain \* \* \* indistinct \* \* \*  
[applause].

SEYMOUR. Alright, operator. Who wants to try for that phantom award now, please.

OPERATOR. Mr. Carl Dawn ? of Gary, Indiana.

SEYMOUR. Mr. Carl Brown, of Gary, Indiana. Hello, Mr. Brown. This is Dan Seymour of New York, just saying you can win a Lewett? vacuum cleaner. You'll find the Lewett the world's most powerful cleaner. It takes up more dirt, lint and threads, and there's no dust bag for you to empty out there in Gary, Indiana.

To win the vacuum cleaner, name that Park Avenue Hill-Billy for us will you, Mr. Brown?

BROWN. \* \* \* no voice sound \* \* \*

555 SEYMOUR. Dorothy Shaye, right you are. \* \* \* (Music)  
\* \* \* [Applause].

All right, Mr. Brown, good going. You've won that vacuum cleaner.

And you've won that wonderful opportunity to try for \$53,000 worth of treasure and cash. Your chance out there to win radio's

greatest jackpot. So, listen—here recorded for you, Mr. Carl Brown, of Gary, Indiana, is our \$53,000 phantom voice.  
VOICE.

Stephen wrote,  
And I quote,  
Blandings paying more;  
Wolves will bay,  
Donkies bray,  
A phantom walks the floor.

SEYMOUR. Mr. Brown, you're first this evening to get this opportunity. Can you identify him for us?

BROWN. \* \* \* no sound of voice \* \* \*.

SEYMOUR. You say it's who, sir?

Oh, you haven't the slightest idea. \* \* \* (Laughter.)

Well, we're still going to send you the wonderful vacuum cleaner you did win. Thank you very much for helping us play 'Sing It Again' from Gary, Indiana. \* \* \* (Applause.)

Well, you know—it's been 4 weeks now since we first heard our phantom voice and no one's come up with the right answer yet. But don't forget the longer the phantom remains a secret, the more help we give you.

Yes. Before the show is over tonight, we'll give you another clue. So, stay by that radio. Stay by that phone, because the next Sing It Again call might be for you. \* \* \* music \* \* \* more \* \* \*.

SEYMOUR. Two is company, three's a crowd, but five is harmony by the Riddlers, who combine talents now to sing, "It's Yes, Yes In Your Eyes."

(Music.)

556 SEYMOUR. And now the Riddlers march in to sing about a man who loved a parade. You guess this man's name and the Riddlers will sing it again.

RIDDLERS.

His marches for touchdowns at the football games they cheer,

Rah, rah \* \* \*

When Lions or Masons at conventions you will hear,

And until \* \* \* when flags wave and grandstands appear,  
The whole nation marches, but it's John's march we hear.

(Music.)

(Unintelligible) \* \* \* from ear to ear.

(Music.)

(Applause.)

SEYMOUR. Hello, operator, who's waiting to play Sing It Again now, please?

OPERATOR. Mrs. Bonnie Chidd, of Clarksburg, W. Va.

SEYMOUR. Mrs. Bonnie Chidd, of Clarksburg, W. Va. Hello, Mrs. Chidd. This is Dan Seymour in New York. You're in line to win the brand new, grey Magic Royal portable, just introduced. It's the last work in writing comfort, Mrs. Chidd. This Royal is the only standard typewriter in portable size. And we'll send it to you if you can name that March King for us [pause].

"When Johnny Comes Marching Home"? [laughter]. I'm sorry. That's a very long name. I've never heard him called that before, Mrs. Chidd. No. We're going to send you, tho, an Everlast Danport aluminum ice bucket and all our thanks for helping us play Sing It Again from Clarksburg, W. Va.

And so, an officer from our studio audience, Bern.

BENNETT. Yes, Dan, Mr. R. E. Greene of St. Albans, N. Y. [applause].

SEYMOUR. Well, Mr. Greene, can you name the March King?

GREENE. John Philip Sousa.

SEYMOUR. John Philip Sousa! The wonderful portable is yours. And now we're sending out more calls. Operators from coast to coast are flashing those calls along. So, Ray Block, let's not hold them back.

557 Allan Dale at the helm of this popular ballad. He's charting his course for the "Four Winds and the Seven Seas."

(Music.)

SEYMOUR. Allan gets back on dry land now to impersonate a new and exciting bebop baritone. You tell us who it is and Allan will Sing It Again.

#### DALE

A new prince of song has come rolling along,

It's Bill and it's Caroline. (?)

\* \* \* stars above that shine \* \* \*

The mystery of that \* \* \* light

That shines upon our Caroline.

(Balance unintelligible.)

(Applause.)

SEYMOUR. Allright, operator. Who wants to try for that \$53,000 now, please?

OPERATOR. Miss Dorothy Monticello, of Philadelphia, Penn. Hello, Miss Monticello. This is Dan Seymour in New York. I'll bring you a chance to win 48 pounds of delicious hotel bar butter, Miss Monticello. One pound for every week for the next 48 weeks. But first, you'll have to name that Billy that gets top billing.

Billy Eckstein—right you are!

All right, now, Miss Monticello, here's your chance to ride to riches in a beautiful Nash Ambassador air-flight four-door sedan. Here recorded for you down there in Philadelphia, Penna., is Sing It Again's phantom voice.

PHANTOM VOICE.

Stephen wrote, and I quote,  
Blandings paying more,  
Wolves will bay, donkeys bray,  
A phantom walks the floor.

SEYMOUR. Miss Monticello, can you tell us that man's name, please? You're afraid you can't. Oh, I'm sorry. You're not even to guess. We're still going to send you all that wonderful  
558 butter, tho. Thank you very much for helping us play Sing It Again from Philadelphia, Penna.

(Music.)

Okay, folks, make way for a great eastern potentate. Bob Howard's rolling out the red carpet for His Royal Highness, the Maharajah of Magador.

HOWARD. "The Maharajah of Magador."

SEYMOUR. And now Bob sings about a royal twosome, who expects a state visit from a busy bird. You guess what we mean and Bob will Sing It Again.

HOWARD

Princess Rita and Aly have let it out,  
That they're going to have something to shout about,  
Rita's shopping for cribs, buying bottles and bibs  
Aly's getting \* \* \*?, he'll walk the floor.  
He'll be a pa, and in the palace you hear a roar.  
Oh, how lucky that babykins,  
Pearls and rubies on diaper pins,  
Sixteen cylinder kiddycar,  
And to top it all what a Mamama.  
Oh, that royal stork is coming,  
From India to Cali-for-n-i-a. [Applause].

SEYMOUR. Yes, operator? Who's going to play Sing It Again now please? Mr. Arnold Swindell of Joplin, Missouri. Hello, Mr. Swindell. This is Dan Seymour in New York. Listen to what you can win for the golfer in your family. I hope it's you, sir. From the Horton Manufacturing Company of Bristol, Conn., originators of the steel gold club shaft, a complete set of men's handsome, precision-balanced golf clubs, the very last word in the art



of fine clubmaking. But, first, tell us what Princess Rita and Aly have announced, would you? (Pause.) They're expecting a baby, that's right! (Applause.) Allright! And we're expecting you to take \$53,000 away from us, if you have the right answer. Here, recorded for you, Mr. Arnold Swindell, of Joplin, Mo., it's  
 559 our phantom voice.

#### PHANTOM VOICE.

Stephen wrote, and I quote,  
 Blandings paying more,  
 Wolves will bay, donkeys bray,  
 A phantom walks the floor.

SEYMOUR. How about it, Mr. Swindell? Do you know that man's name? (pause) Aly Kaln [laughter]. No, I'm sorry, Mr. Swindell, that's not the phantom Voice. We're going to send you the wonderful golf clubs you did win, tho. Thank you very much for helping us play Sing It Again from Joplin, Missouri.

Well, all of you keep working on that \$53,000 puzzle. You know, your chance to win radio's greatest jackpot may be along in a minute. Our operators are choosing more names and numbers at random for our huge collection of phone books. And we'll be ready for more calls in just a minute. But, first, here's Bern Bennett with a short reminder.

BENNETT. Yes, Dan, a reminder for everyone to listen to Arthur Godfrey and his Talent Scouts show every Monday. Arthur presents young stars of tomorrow and a show full of comedy and music. And, of course, our man Godfrey just makes himself at home and keeps you chuckling for a whole half-hour. And remember Monday is the hite for Lux Radio Theatre too. So be sure to listen to Arthur Godfrey and his Talent Scouts and Lux Radio Theatre, Monday evenings over most of these same CBS stations.

This is CBS \* \* \* The Columbia Broadcasting System.  
 (Music.)

ANNCR. Yes, it's the musical quiz game, Sing It Again, with Allan Dale, Bob Howard, Rosemary Cluny, pinch-hitting for Eugenie Bayard, the Riddlers and Ray Block's orchestra. And here-again is that man with the long distance 'phone, Dan Seymour.

SEYMOUR. Population reports: Chicago, Ill., 3,396,808; Ada, Ohio, 2,368. Yes, the Sing It Again calls ring out to the  
 560 great cities and to the small towns all over America. Big or small, we call them all. If you have a telephone and a radio, here's your chance to win that \$53,000 award—\$28,000 in prizes, \$25,000 in cold, hard cash. So remember that clew: In a famous song you'll note, a fortune hanging by a quote. Yes, that's

the clew, and now our operators have thirty more minutes to choose more names and numbers at random from our nationwide telephone listing. So, let's start the calls and start the music, Ray Block. Let's Sing It Again.

(Music.)

SEYMOUR. Rosemary Cluny makes her second appearance on Sing It Again, with a song about the tomorrow that never quite becomes today. The Spanish have a word for it, "Manana."

CLUNY. Manana.

SEYMOUR. Rosemary takes us out to the ball game to meet a star who's rounder than a baseball and thinks Li'l Abner invented the game instead of Abner Doubleday. You guess who we mean and Rosemary will Sing It Again.

CLUNY

The Yankees have a Yogi who's a rugged Nature Boy,  
He might Pile Up his grammar, but his batting is a joy.  
He loves to read the comics, for they never strain his brain,  
But when the Yogi travels, how his doctor will complain.

Hey Yogi! Hey Yogi! You must wear

Pajamas in air-conditioned trains.

When Casey Stengel told him, "don't just swing at anything,  
Each time you pick a ball out, Yogi, think before you  
Swing."

Then Yogi said to Casey, "I must be frank with you,  
To Hit it one time is more than I can do."

This Yogi, "oh Casey, you're giving me much too much  
to do.

How can a guy think and hit at the same time, too?"  
[Applause.]

SEYMOUR. Okay, operator, who's ready to start the second half of Sing It Again, please, Mrs. Arthur Nelson, of Raymond, Washington, Hello, Mrs. Nelson. This is Dan Seymour in New York. We have a fine prize for your home in Washington: custom-made Artercraft all-metal venetian blinds, in your own choice of decorators' colors, for any three rooms of your home in Raymond, made especially for you by Artercraft of St. Louis. Now, the blinds are yours, Mrs. Nelson, if you've got a Yogi handy who isn't an Indian. Got the answer to that last parody? (Pause.) Yeah, I want the Yogi's last name, that's right Mrs. Nelson. He's a ball-player. You're doing very well so far. You just have to give me his name. Mrs. Nelson. Is it Carmichael? [Laughter.] That is a Bear, Mrs. Nelson, not a Yogi. No, I'm awfully sorry. We're going to send you, tho, a handsome \* \* \* travelette alarm clock, made by the celebrated Macombre Watch Factory,

makers of the most exceptional watches and clocks in all the world. And all our thanks for helping us play *Sing It Again* from Raymond, Washington. And so, a gentleman from our studio audience.

BENNETT. Dan, from Summit Hill, Penna., here is Mr. Paul Johnson.

SEYMOUR. Mr. Johnson, can you name that Yogi who isn't an Indian?

JOHNSON. Yogi Berra [applause].

SEYMOUR. All right now. Stand by, you may hear the phone ring in the next few minutes. So listen—it might be *Sing It Again*. Allan Dale has learned learned many a romantic song, but he admits that no matter how hard the song writers try, there's just one way to say *I Love You*.

ALLAN DALE. "I Love You."

SEYMOUR. There's only one way to answer our riddle verse. You try to locate a romantic city on the Blue Danube—and Allan will *Sing It Again*.

DALE.

This city was pretty when Strauss was the King,  
They'd waltz and they'd sing, romancing.  
They'd waltz and they'd sing, romancing  
It's river a-quiver with moonlight and stars  
Inspire these bars to dancing.

When they went to dine,  
Wiener schnitzle was fine,  
562 And the hofbraus were crowded till dawn,  
They'd cheer in their beer,  
When they'd get Johann Strauss,  
To play Fledermaus till morning,  
The whole world (a darker city).

[Applause.]

SEYMOUR. Hello operator, who's ready to answer that one for us please?

OPERATOR. Mrs. Irene Chambers of Springfield, Illinois.

SEYMOUR. Mrs. Irene Chambers of Springfield, Illinois. Hello, Mrs. Chambers. This is Dan Seymour in New York. If you give us the answer to the riddle, you can win a new polaroid lensed camera and here's what you do with it, Mrs. Chambers. Just click the shutter, press the button, pull the tab, wait only 60 seconds, open the back door and there's the finished, album-sized picture. But before the camera is yours, you'll have to name the waltz capital for us, Mrs. Chambers. The waltz capital, yes.

Quickly, Mrs. Chambers, I'm awfully sorry. There's an awfully lot of people waiting to be called tonight. No answer. What? No answer! Oh, I'm sorry. We're going to send you though the tiny micropedal camera you've read about in Life magazine. You wear a pedal on your lapel, no bigger than half a dollar, it takes pictures three times its own size. All our thanks for playing "Sing It Again" to Springfield, Ill.

And a lady from our studio audience.

BENNETT. And her name is Catherine Rozansky from Scranton, Penns.

SEYMOUR. Welcome to "Sing It Again." We have a wonderful prize we'd like to see you take back to Scranton. Can you name that waltz capital for us?

ROZANSKY. I'd say Germany. I'm taking a chance.

SEYMOUR. Oh, no! Audience!

[Audience noise.]

SEYMOUR. Vienna! The beautiful city on the Blue Danube. Oh, I'm afraid that camera is going to stay right put on "Sing It Again." Let's try to get another winner now, though. How about it, Ray? Music.

BENNETT. Time to swing it again with "Sing It Again." Bob "Beat it Out" Howard and "I Never Knew I Could Love Anybody."

(Music: "I Never Knew I Could Love Anybody" by Bob Howard.)

[Audience applause.]

BENNETT. Bob still has love on his mind now as he spotlights a front-page romance. You guess gentleman involved and Bob, you "Sing It Again."

#### HOWARD

They say that Alben is going out steady,  
Keeping steady company,  
They say that our VP,  
Down in Old DC,  
Found a lovely bride-to-be,  
Now if they walk through that arch,  
They say that Harry's going to play The Wedding March,  
He's got all Washington askin' him Alben,  
Is you is or is you ain't? Dear Alben. Is you is or is you ain't?

[Audience laughter, applause, etc.]

SEYMOUR. Hello, operator. Who got the "Sing It Again" ring this time, please?

OPERATOR. Mrs. Leila Underwood of Montgomery, Alabama.

SEYMOUR. Mrs. Leila Underwood of Montgomery, Alabam. Hello Mrs. Underwood. This is Dan Seymour in New York offering you a glorious three week vacation for two in Lake George, including round-trip transportation from New York; one week each at the Thousand Acres Ranch, Top of the World Hotel and The Trout House. Captain George Mains of the Adirondack Chamber of Commerce, Lake George, New York, will personally see that you have a wonderful time, Mrs. Underwood, if you'll just tell us who's fixin' to get hitched?

What do you say, please? Is it Van Johnson? [Audience roars.]

564 I'm afraid not, Mrs. Underwood. I'm awfully sorry though. We are going to send you a Westinghouse iron for all your chores down there in Montgomery, Alabama. Thank you very much for helping us play "Sing It Again." And so, a member of the government from our studio audience. Bern?

BENNETT. Yes, Dan. From the "USS Barton" Seaman Howard Martinson [applause].

SEYMOUR. Can you tell us who's fixin' to get hitched?

MARTINSON. Alben Barkley.

SEYMOUR. That's right!! [Applause, music.] Well, that wasn't the answer we were looking for on the telephone. We had to get it, after a fashion, from our studio contestant. But in case we do get the answer to the riddle and the phantom voice on the next call, let's hear about the rest of the prizes in store for the winner. Here are Bern Bennett and Art Hannes to describe 'em for us.

ANNOUNCER. A one thousand dollar Krakauer spinet piano sprinkled with stardust. Yes, the same piano which Ann Blythe played on the set of Universal International Studios during the filming of the comedy "Come Once More My Darling" co-starring Robert Montgomery and Ann Blythe.

ANNOUNCER. Five hundred dollars worth of famous Flag Brothers shoes for the men in your family and five hundred dollars worth of Flag Brothers shoes to be distributed to veterans hospitals in your name. Flag Brothers, shoes, authentically styled men's shoes in your choice of styles and sizes, made of flexible, tough, longhorn leather, assuring you of higher shine and longer wear.

ANNOUNCER. Ten thousand cans of Phillips' delicious soups, vegetables, and meat products. Forty different varieties of canned goods from quality Controlled Kitchens. From the Phillip's (Packing?) Co. a \* \* \* \* \*

ANNOUNCER. An all expense-paid trip to New York as guests of the Knott Corporation. You'll leave your home for two won-

derful weeks of wonderful living at either the famous McAlphin Hotel or the luxurious New Weston in New York City. Or you may choose from distinguished Knott hotels in eastern cities.

**ANNOUNCER.** And for your trip a complete ensemble of Amelia Earhart luggage, of top-grain cowhide, in the new pastel travel color, the exciting Parisian pink shade, distinctive for Amelia Earhart luggage.

**ANNOUNCER.** A lifetime supply of Corday perfume, one thousand dollars worth of Corday's famous French perfume of lasting fragrance. Cherished perfume such as Toujours Moi, Jet and Fame.

**ANNOUNCER.** A completely fitted Evans handbag with the sensationally new automatic lighter. The purse in this bag will be of special interest because it will contain a one thousand dollar savings bond. All of this will come to you with the compliments of Evans Handbags and Automatic Lighters.

**ANNOUNCER.** From New York's leading sweater designer, Jay Norwill, twelve beautiful knitted dresses plus 18 sweaters with 18 matching skirts. These Jay Norwill originals, designed to be lived in, will give you over 300 interchangeable ensembles.

**ANNOUNCER.** Fifteen handmade \* \* \* needlepoint pieces for your living room and dining room, valued at over one thousand dollars. These pieces are imported directly from Austria and have been carefully chosen from needlepoint pieces from the world famous Jay (Jands?) studios of New York, Shanghai and Vienna.

**ANNOUNCER.** A fabulous Rembrandt television receiver with Rembrandt tone-pure FM radio, \* \* \* \* \* to perfection with Rembrandt's famous 121 square inch crystal clear picture; Rembrandt television, truly a masterpiece! Plus an Alliance Telerotor which provides perfect reception in any direction.

**ANNOUNCER.** Whole silver service for twelve including twelve place-settings plus serving pieces from Easterling's Sterling Silver master craftsman in silver.

**ANNOUNCER.** A gold-plated deluxe Gem razor set and a five year supply of Gem blades. Gem will also send 500 deluxe Gem razor sets to any veterans hospital you name.

566 **ANNOUNCER.** And, finally, don't forget the prize that will thrill and delight the whole family. A beautiful new Nash Ambassador Airflight, four door sedan, the most modern of America's fine cars. Yes, all that's just a part of what you can win if you have the lucky answer and don't forget the twenty-five thousand dollars in cash.

You know we might find the winner of the Phantom Award with our next call, so let's get the game rolling. Yes, let's "Sing It Again." [Music.]

Allan Dale doesn't waste much time. Here he is trying to get a date with Rosemary Cluny. The idea seems to be a stroll around the park. Would you like to take a walk?

(Song: "Would Ya Like To Take a Walk?")

ANNOUNCER. This time Allan and Rosemary would like you to name a famous pair who met their Waterloo. You guess who and Allan and Rosemary will "Sing It Again."

CLUNY

Knock, knock, knock it's your Josie at the door,

DALE

Oui, oui, oui, you're so busy little Nappy,  
That's why I'm unhappy,  
Don't you love your sweet cherie?

DALE

Oh, oui, oui,  
Wellington has my army on the run,  
Josie dear, pack my tooth brush and a gun.

CLUNY

That's like you, never time to see the missus,  
Never make with kisses,  
All you make is history.

DALE

I was once a corporal, now I'm an emperor,  
Because I work.

CLUNY

Bonaparte, the greata,  
I'm here to state you're  
A Jerk.

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DALE

A Jerk!  
Knock, knock, knock, not tonight my Josephine.

CLUNY

Not tonight, that is all I ever hear  
Well all right, I suppose I'll see you later.

DALE

Bye now, sweet pertater  
Got to fight at Waterloo.



CLUNY. You'll be sorry.

BOTH. See you after Waterloo. [Applause.]

SEYMOUR. OK operator. Who got the lucky "Sing It Again" call that time please?

OPERATOR. Mrs. Thomas Hickey of Mechanicville, New York.

SEYMOUR. Mrs. Thomas Hickey of Mechanicville, New York. Hello, Mrs. Hickey. Hello. This is Dan Seymour in New York City, Mrs. Hickey. You can win an attractive solid gold Wittenauer watch, distinguished member of the Longine Wittenauer family of fine watches if you just tell us the names of that little corporal and his wife, please. Tell us the name of the Little Corporal, and his wife, Mrs. Hickey. George Burns and Gracie Allen? [Audience laughter.]

I'm sorry, Mrs. Hickey. That's not right. We are going to send you though to beautify your living room in Mechanicville, N. Y., the sensationally new Evans automatic table lighter. Thank you very much for helping us play "Sing It Again."

And so, our studio contestant. A very charming lady, Bern.

BENNETT. Dan, her name is Mrs. Helen Ferber from Jersey City, N. J. [Audience noises.]

SEYMOUR. Well now perhaps you can help us. Can you name that Little Corporal and his wife?

FERBER. Napokon—is it something like that \* \* \*?

SEYMOUR. Audience?

AUDIENCE. Napoleon.

SEYMOUR. Napoleon and Josephine. "Knock, knock, knock, it's your Josie at your door \* \* \* You're so busy little Nappy \* \* \*" that's what we sang. He says "I was once a corporal, now I'm emperor \* \* \*." Bonaparte the great. "No, no, knock, knock, not tonight my Josie dear." I'm sorry. No prize. So let's have another tune, Ray Bloch. [Music.]

ANNCR. Step right up, folks. A free ride if you can get the brass ring. Climb up on one of our beautiful horses and listen as the Riddlers sing, "The Merrygoround Waltz."

(Song: The Merry-goround Waltz.)

ANNCR. The Riddlers go around for another verse. This time they describe a lady who carried the torch. You guess her name and Riddlers, you "Sing It Again."

One lady we love as a symbol of our USA  
She stands high above with a freedom torch  
Lighting our way.  
Out there in the bay, it's a message for all men  
To see  
Give me your tired, your poor, your huddled masses  
Yearning to breathe free.

The wretched refuse of your teeming shore.  
 Send these, the homeless, tempest-tossed to me.  
 I lift my lamp beside the golden door.  
 She stands at the gate of the home of the brave and  
 The free.

SEYMOUR. Hello, operator. Who wants to play "Sing It Again" now, please?

OPERATOR. Mrs. Lawrence Norgard of Omaha, Nebraska.

SEYMOUR. Mrs. Lawrence Norgard of Omaha, Nebraska. Hello, Mrs. Norgard. This is Dan Seymour in New York. Here's a prize any home can use. A deluxe (Pentwater?) Picnicook, a complete outdoor barbecue from the Pentwater Machinery Co.,

Pentwater, Michigan. Now it's all yours, Mrs. Norgard 569 if you can tell us who stands "beside the golden door."

I know you said yes, but I want the answer, Mrs. Norgard. That's the what—the what—what, what did you say? The Statue of Liberty! That's right. Of course! [Fanfare.]

All right now, Mrs. Norgard, out there in Omaha, Nebraska. Opportunity is knocking at your door, to the tune of fifty-three thousand dollars. Here recorded for you, is your phantom voice.

#### PHANTOM VOICE

Stephen Wrote, and I quote  
 Blandings paying more,  
 Wolves will bay, donkeys bray.  
 A phantom walks the floor.

SEYMOUR. Mrs. Norgard can you give us that man's full, correct name please? Yes. You want to hear him again. [Laughter.] Oh, I'm sorry we can't do that, Mrs. Norgard, and you haven't any guess. We're still going to send you the wonderful prize you did win, though. Thank you very much for helping us play "Sing It Again" from Omaha, Nebraska.

Well, I'm afraid that will have to be all the calls for tonight, but now it's time to give you that clue I promised you, the clue that may give you the answer to our phantom voice. Listen! A band, a night club, a baseball bat, can drop a fortune in your hat.

Yes, that's the clue and now the Phantom Award is ready to peg a new high. I'll tell you about that in just a minute. First, though, I'd like all of you to hear that all-important voice once more. Here, recorded for all America is our phantom voice.

## PHANTOM VOICE

Stephen wrote, and I quote  
 Blandings pay more,  
 Wolves will bay, donkeys bray  
 A phantom walks the floor.

## SEYMOUR

Stephen wrote, and I quote  
 Blandings paying more,  
 Wolves will bay, donkeys bray  
 A phantom walks the floor

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Yes, these are the words that will mean a fortune to someone, including our new addition to the jackpot. Two prizes. First, a sportsman's dream come true. A wonderful outdoor prize from the Baxter Miles Manufacturing Co. of Lenoche, Arkansas, a Jimmy B. roverboat and to go along with that boat—listen all you fishermen—a complete line of Wright & McGill fishing tackle for every member of your family, including a world famous Wright & McGill (granger deluxe) split cane flyrod, Wright & McGill fishing coils, casting rod and eagle clawed snail hooks all from the Wright & McGill Co. of Denver, Colo., plus a five hundred dollar wardrobe of Goody-made suits, featuring the famous custom tailored (Bellows) pockets and Don MacDonald topcoats, tailored by Goody-made, all from the quality famous Goody-made Company.

And with those two prizes our phantom award jumps up to fifty-four thousand dollars. Fifty-thousand dollars worth of treasure that you may win next win. So once again I'm going to give you the clue that we added tonight in our search for your phantom voice. Remember, A band, a night club, a baseball bat, can drop a fortune in your hat.

And now this is Dan Seymour saying get to work on that clue because next week, I may call you. [Music.]

ANNCR. "Sing It Again" featuring Dan Seymour, Allan Dale, Bob Howard, Rosemary Cluny pinch-hitting for Eugenie Baird, the Riddlers and Ray Bloch's orchestra is produced by Lester Gottlieb and directed by Bruno Durato, Jr. Original "Sing It Again" lyrics are by Hi Derry (?) Jimmy Sherrill, Irvin Drake, Bill Stein, and Albert Tilman. And now, this is Bern Bennett speaking and reminding you to listen Monday night to "My Friend Irma" starring Marie Wilson. Irma is the dizziest girl on the radio and she always gives you one laugh riot after the other. Be sure to listen to "My Friend Irma" every Monday evening and listen, too, to the Lux Radio Theater also heard on Monday over most of these same CBS network stations. This is CBS—the Columbia Broadcasting System.

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*Exhibit II to amended complaint*

## COLUMBIA BROADCASTING SYSTEM

## HIT THE JACKPOT

Tuesday, August 23, 1949, 10:00-10:30 p. m.

ANNCR. Okay, USA, get set to play \* \* \*. [Music.]

North, south, east, west, calls going out now all over America—maybe to you! Tonite, a fortune in fabulous prizes for the exact words of the secret saying. Tonite, maybe you can play and win by phone from your own home, as the DeSoto-Plymouth dealers of America invite you to Hit the Jackpot. [Applause.]

(Music.)

## CHORUS

It's true, true, true DeSoto service is great

Now, you, you, you better sign and don't wait and don't forget all dealers who sell DeSoto,

Sell you Plymouth as well.

It's true, true, true, in the right places, too (?)

The Plymouth—So be sure to see your DeSoto-Plymouth dealer.

ANNCR. Things are a lot different these days than they were just a while ago, aren't they? We realize that almost every time we go shopping. The customer gets treated a lot more courteously now than before. But there didn't have to be any change in the attitude of the DeSoto-Plymouth dealers toward their customers, because courtesy always was a watchword with them—and it still is. The folks at your DeSoto-Plymouth dealers, those in the shop and those in the office like to see a customer pleased. So it's their aim every day to treat customers with the respect they deserve, to do the best work they know how. And DeSoto-Plymouth dealers charge fair prices for the work they do for you. So you see there's been no change at all in their attitude toward you as a customer. Whether you're in the market for a new car, a used one, or just a simple repair job, come in and see what a grand place it is to do business. And remember you can see the new Plymouth  
573 at all authorized DeSoto-Plymouth dealers.

CHORUS. So be sure to see your DeSoto-Plymouth dealer.

ANNCR. And now, get set for fun, get set for phone calls, get set to Hit the Jackpot, with the King of bluff and challenge \* \* \* Bill Cullen. [Applause.]

(Music.)

CULLEN. Thank you, thank you, George Bryan. Hello, everybody—and welcome to the DeSoto-Plymouth Hit the Jackpot.

Well, we had plenty of excitement last week when we landed a jackpot winner. Yes, Billie Joe Clather (?), of Knoxville, Tenn., gave us the exact words of the DeSoto-Plymouth secret saying and won our giant jackpot, bulging with wonderful prizes, including that beautiful new DeSoto sedan. Nobody loves the fat man with the words that Hit the Jackpot for him (?) Tonite we're going to make phone calls and more phone calls to every part of the United States, looking for our next Jackpot winner. Maybe it will be you. So I'll start things rolling with our first phone call. George!

BRYAN. Well, it's right on your wire, Bill. Our CBS operators have just gotten thru to Mrs. Mary McGinnis of 945 Music Street, Scranton, Penn.

CULLEN. Oh, hello, Mrs. McGinnis in Scranton. How are you? Mrs. McGinnis we're going to give you the clues to our brand-new DeSoto-Plymouth secret saying, and if you can give me the right answer you'll win every prize in our new jackpot. Now, are you ready over there, Mrs. McGinnis? All right, get set to hear the clues and listen closely, because—here they come.

VOICE. Here's a clue to the first word of the secret saying.

SPEAKER. \* \* \* (unintelligible). How about my cigar?

2ND SPEAKER. What do you mean, "cigar"? Here are five cigars.

VOICE. Now here's a clue to one of the key words. [Sound.]

VOICE. And now a clue to the last word.

574 BARKER. All right, step right up, folks. Watch the little pig \* \* \* now it's here, now it's there. Watch the little pig and remember—the hand is quicker than the eye.

CULLEN. All right, now, Mrs. McGinnis, you have all you need to figure out the answer. Millions of people are waiting to hear what your answer will be, because if you miss there'll be more phone calls going out thruout the United States. So may I have your answer to our new DeSoto-Plymouth secret saying? [Pause.] What did you say, mam? What's your answer? Would you give it to me again? "The Grand Old Army." No, that isn't the answer, but for making such a good try, we'll see that you receive a lovely Benrus Embraceable wristwatch with the best wishes of your friendly DeSoto-Plymouth dealer, who brings you Hit the Jackpot.

All right, George, how about another home player?

BRYAN. Why sure, Bill. Here's Mrs. Emma McCarthy of 2042 West Seventh St. in St. Paul, Minn.

CULLEN. Oh, good old Minnesota. Hello, Mrs. McCarthy. Mrs. McCarthy, for every one of the marvelous prizes in our new jackpot, what do you say is the DeSoto-Plymouth secret saying?

[Pause.] May I have your answer? Oh, I'm sorry. That's a wrong answer. But, I'll tell you what, for a good try, we'll see that you receive a year's supply of ice cream sundaes, 52 quarts of ice cream, six sundae glasses, 144 cans of famous Topflight toppings in six delicious flavors, and a walnut, compliments of the DeSoto-Plymouth dealers, who bring you Hit the Jackpot. Good-bye!

(Music.) [Applause.]

CULLEN. All right, operators, I'll want more phone calls very soon, but right now, I think it's time for some bluff and challenge.

BRYAN. Right, Bill. And here's Bob Niehoff of Milwaukee, Wisconsin, our first climber for tonite. And Mrs. Martha Herrgot of Peoria, Ill., is first challenger.

CULLEN. All right. I'll say hello to Mrs. Herrgot. Is that correct?

HERRGOT. That's right.

575 CULLEN. All right, I'll talk to the ladies first. How are you, Mrs. Herrgot?

HERRGOT. Fine, thank you.

CULLEN. Well, we're happy to have you here from Peoria, Illinois. And Bob Niehoff, where are you from, again, Bob?

NIEHOFF. Milwaukee, Wis.

CULLEN. All right, what do you do, Bob?

NIEHOFF. I'm a bank teller.

CULLEN. What do you do, Mrs. Herrgot?

HERRGOT. I'm a secretary to the sales manager.

CULLEN. All right. That sounds like fun on both counts. Get ready, both of you, because now, Bob Niehoff, you're going to try for a wonderful Keystone home movie outfit, the famous Keystone camera, projector, screen and film. And this is a bit of a musical question. You stand by, Mrs. Herrgot, to accept or challenge. Al Goodman and the DeSoto-Plymouth orchestra are going to play two songs for you now, Bob. These songs have something to do about the seasons of the year. Listen real closely and then get ready for a question. Okay, Al! [Music.]

CULLEN. All right. That was No. 1. Now here is No. 2. [Music.]

CULLEN. All right. And here's the question. Do these songs refer to the same season or to different seasons of the year, Bob?

NIEHOFF. The same season.

CULLEN. The same season. Do you accept or challenge, Mrs. Herrgot.

HERRGOT. I challenge.

CULLEN. And you challenge correctly. The Keystone home movie outfit is yours. You become our player. You're up there

on step No. 1. [Applause.] The answer to that one naturally was different seasons. One was "Younger Than Springtime"—that's spring; and the other, "Baby, It's Cold"—that's winter, or we can even get closer with fall. That was the answer  
576 we were looking for. George, do we have a new challenger for our new climber, Mrs. Herrgot, over here?

BRYAN. We do, Bill. It's Mrs. Rosemary Track of Jackson Heights, N. Y.

CULLEN. Hello, Mrs. Track. Say hello to Mrs. Herrgot, if you will.

BOTH. How do you do?

CULLEN. All right. That takes care of the formalities. Get ready, Mrs. Herrgot, here comes your question. You're trying for step No. 2 on your way to a try at that DeSoto-Plymouth jackpot, and a famous Tappan gas range with a visualite oven, a divided top and a Tappan teluset. And here's your question: When a farmer speaks of a heifer, is he talking about a male or a female animal. Don't anybody help.

HERRGOT. Female.

CULLEN. Female. Do you accept or challenge, Mrs. Track. TRACK. Challenge.

CULLEN. Oh, you should have accepted that time, because that answer was right. That retires you from the game. Mrs. Herrgot, you're on step No. 2 and you get the gas range. You're doing all right. [Applause.] Good for you, Mrs. Herrgot. George, who do we have up there as a challenger?

BRYAN. Here's Jay Drubb of Philadelphia, Penna., Bill.

CULLEN. Hello! Drubb, is that right?

DROBB. Drobb!

CULLEN. Drobb! All right, Mr. Drobb. Say hello to Mrs. Herrgot over there.

DROBB. Hello.

CULLEN. Everybody's introduced. We're going to give Mrs. Herrgot a chance now for that third step and a week's vacation for two at Miami's luxurious Cadillac Hotel, right on the ocean. Now you're going to fly round-trip to Miami on a National Air Line's giant DC-6, National's famous non-stop, four-hour flight. And here comes your question. Listen carefully, because Al Goodman and the orchestra have some fascinating Latin American music for you. And then, I'm going to have a nice, fascinating little question for you. It's all yours, Al.

577 CULLEN. All right. Now here's that fascinating little question. If you were dancing to that music, would you properly, Mrs. Herrgot, be doing a tango, a rhumba or a samba? Which would you be doing?

HERRGOT. A rhumba.



CULLEN. A rhumba. Do you accept or challenge, Mr. Drobb?  
DROBB. Challenge.

CULLEN. And you challenge correctly, sir; the answer should have been samba. You get that two weeks' vacation at the Cadillac and you're on step No. 3. [Applause.] Thank you, Mrs. Herrgot, for being with us. All the prizes that you've won are already yours. And, as I said before, the answer was samba. Mr. Drobb, you're our brand-new climber. George, who's our brand-new challenger?

BRYAN. Joe Matthews of Goldsboro, N. C., Bill.

CULLEN. Hello, Joe from Goldsboro. Come on out here and say hello. What do you do in Goldsboro, Joe.

MATTHEWS. I'm up here to arrange about the importing of monkeys, from the West Indies.

CULLEN. Importing of money?

MATTHEWS. Monkeys.

CULLEN. Well, the same thing, practically. All right. [Laughter.] You and Jay over there \* \* \* get ready, because this is a real big question for the two of you. And the answer to this one has to be right to earn you your chance to Hit the Jackpot. No bluffing on this one at all. If you miss, then on to more phone players all over the U. S. A. Now, Mr. Drobb, you're trying not only for a chance at the DeSoto-Plymouth jackpot, but you're trying also for a shiny Leonard home freezer that holds over 200 pounds of frozen foods: it's \* \* \*! by the famous Leonard Glacier Seal Unit. And here comes your question. Get ready. We have a five-second time limit. There are four time zones across the United States. Into how many time zones is the whole world divided? Go! You have three seconds.

DROBB. Eight.

CULLEN. Eight. Do you accept or challenge, Mr. Matthews?

578 MATTHEWS. I challenge that.

CULLEN. And you challenge correctly, Mr. Matthews. The shiny, Leonard home freezer belongs to you, sir. [Applause.] All right, now. That was the correct challenge. I'll tell you what. To earn your chance to Hit the Jackpot, you have to give me the correct answer to the question; what is the correct answer, Mr. Matthews? Don't anybody help, or we'll have to give a new question. Mr. Matthews what's the correct answer?

MATTHEWS. Throughout the world.

CULLEN. Yes. You have five seconds. Four. Come on. Three. Two.

MATTHEWS. Five.

CULLEN. Five. No, I'm awfully sorry. I'm terribly sorry. The correct answer I'll tell you right now: 24—one for each hour of the day. You do, however, Mr. Matthews, get a chance to keep that home freezer. And since neither of our studio players gave me the right answer, I'll tell you what—that means a phone player from home gets next chance to Hit the Jackpot. [Applause.] (Music.)

CULLEN. Well, let's see, both of your studio players knocked themselves out on that last question. So now more phone calls, all over the U. S. A. Operators get me as many phone players on the line as you can. In the meantime, listen to some of the wonderful prizes we've got in our new DeSoto-Plymouth jackpot.

BRYAN. First of all, you go on a trip to stir your wildest imagination. You take a leisurely voyage to the Mediterranean, aboard a comfortable Leitz sea-type cargo liner, visiting lands of history, mysterious North Africa and the exotic Near East, guests of Leitz Brothers Steamship Line.

ANNOUNCER. And you'll pack your belongings in a wonderful collection of famous Windship Luggage, made by the Windship Luggage Company of Utica, N. Y., the only luggage with the wonderful dress carrier.

BRYAN. Then, so you'll be well dressed for every occasion, here's a fabulous wardrobe of smart Simson men's clothing, custom tailored of the finest materials by famous J. B. Simson, Inc.

ANNOUNCER. And here's fun for the whole family—a 120-579 base Gallanti (?) Bros. featherweight accordion, famous for exquisite tone and accurate scale. And, listen to this, Gallanti Bros., outstanding makers of piano accordions, will see that you and every member of your family receive accordion lessons for a whole year.

BRYAN. And here's that prize of all prizes—the car designed with you in mind, the car that lets you drive without shifting—a beautiful brand new DeSoto four-door custom sedan.

(Music.) [Applause.]

BRYAN. All right, Bill. Here's another phone call, to Mrs. Joseph Durra, of Bellaire Road, Cleveland, Ohio.

CULLEN. Oh boy! Hello, in Cleveland, Ohio, to you Mrs. Durra. How are you? I'm happy to be talking with you. And I'll tell you what, I'm happy to give you a chance to Hit the Jackpot. Listen closely while we give you the clues to the DeSoto-Plymouth secret saying, because they hold the key to the answer. Get set, Mrs. Durra, because here come the clues.

(Clues—same as page 2.)

CULLEN. All right, now for your answer. If you miss, then more phone calls all over the U. S. A. What is your answer, Mrs. Durra? What did you say, again, please Mrs. Durra? All or nothing at all! Oh, that's wrong, I'm sorry. So, operators, get me another phone player. And for a good try, Mrs. Durra, you're going to receive all \* \* \* [unintelligible]. It locks into position with a flick of the finger—compliments of your friendly DeSoto-Plymouth dealer who brings you Hit the Jackpot. And, operators, keeping your lines humming. Get me as many phone players as you can. But, first, I'd like to remind you that the employees of the Chrysler Corp., dealers, its advertising agency, the network and members of their immediate families aren't eligible to play Hit the Jackpot but you other folks can get the opportunity to be called by sending a postcard. Put on it your name, your address and your phone number, mail it to DeSoto-Plymouth Hit the Jackpot, CBS, 485 Madison Avenue, New York 22, N. Y.

If you live within the continental limits of the United States 580 and you'd like to try to Hit the Jackpot during August, mail your August postcard now. Cards mailed before August are no longer good.

And right now, let's see if we're ready with more phone calls.

BRYAN. Oh, we are, Bill. There are lots more on the line. Here's one to Mrs. Mildred Federickson of Earl Street, St. Paul, Minn.

CULLEN. Hello, Mrs. Frederickson. Give me the right answer to the DeSoto-Plymouth secret saying and you'll Hit the Jackpot for a fortune in prizes. Let me see if you can do it. Go ahead. All right. [Pause.] "What this country needs is a good five-cent cigar." That's a great idea, but the wrong answer. Operator, get me another phone player. For trying, we'll send you a chest of famous Gorham silver plate, 52 pieces, in your choice of pattern—and a five-cent cigar, compliments of your DeSoto-Plymouth dealers, who bring you Hit the Jackpot.

George, have you got another phone call?

BRYAN. You bet, Bill. Say hello to Miss Annie Dell Peacock of Lucky Street NW., Atlanta, Georgia.

CULLEN. Well, hello, Miss Peacock, of Lucky St. NW., Atlanta, Georgia, how are you? All right. Miss Peacock, what do you say is the DeSoto-Plymouth secret saying? We'll give you ten seconds for the exact words. Go ahead. Hello, Miss Peacock, what is it? Hey, Miss Peacock! Hey! Anyone know a peacock birdcall? I'm awfully sorry. That's not the right answer, but \* \* \* (balance of recording blank).

Ediphone trans./E. Scheiner.

600-601 In United States District Court

Civil Action No. 52-38

[Title omitted.]

[File endorsement omitted.]

*Notice of motion*

Filed September 24, 1952

SIRS: Please take notice that upon the amended complaint herein, the stipulations between the parties, dated September 22, 1952, the affidavit of Max Freund verified the 22nd day of September 1952, and all the other papers and proceedings heretofore filed and had herein, plaintiff will move the statutory three-judge District Court to be convened in the above-entitled action at such time and place as the Court may designate for summary judgment granting the relief demanded in the amended complaint, pursuant to Rule 56 of the Rules of Civil Procedure for the United States District Courts, on the ground that there is no genuine issue as to any material fact and that the plaintiff  
602 is entitled to judgment as a matter of law.

Dated: New York, New York, September 22, 1952.

Yours, etc.,

ROSEMAN, GOLDMARK, COLIN  
& KAYE,

*Attorneys for Plaintiff.*

By MAX FREUND,

*A Member of the Firm.*

To: Attorney General of the United States, Washington, D. C.;  
United States Attorney for the Southern District of New York,  
United States Courthouse, Foley Square, New York, N. Y.; Fed-  
eral Communications Commission, Washington, D. C.

603 *Affidavit in support of motion for summary judgment*

STATE OF NEW YORK,

COUNTY OF NEW YORK.

*Southern District of New York, ss:*

Max Freund, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman, Goldmark, Colin & Kaye, attorneys for the plaintiff in the above-entitled action. I am fully familiar with all the proceedings heretofore had in this action.

This affidavit is made in support of plaintiff's motion for a summary judgment herein.

I refer to plaintiff's amended complaint, verified by Richard Salant, upon which this motion is likewise based, for the basic facts involved in this action.

2. On information and belief, I believe the facts stated in this affidavit to be true.

3. On December 30, 1943, Chairman Fly of the Federal Communications Commission wrote to Senator Wheeler, Chairman of the Senate Interstate Commerce Committee, proposing remedial legislation by Congress which would have specifically extended the coverage of the broadcast lottery provision to those programs which offered prizes to the radio audience. A copy of said letter is annexed hereto as Exhibit A. The suggested legislation was never adopted.

4. Clef, Inc. v. Peoria Broadcasting Co., decided in November, 1939, in the Circuit Court of Peoria County, Tenth Judicial District, State of Illinois, passed on the legality of a radio program known as Mu\$ico which was broadcast over station WMBD in Peoria (owned by the Peoria Broadcasting Co., defendant in the action). It was conducted as follows: Cards containing 25 squares, set forth in five horizontal and five vertical rows, were distributed free of charge at the stations and at the sponsors' retail stores and at other sources. Each square contained the name of a song and players checked off the title as the studio orchestra played the tune. Prizes could be won in various ways. Among others, a player became entitled to a prize when he checked any one of the three specified horizontal rows on the card.

To win a prize, the contestant must have obtained a card with a winning row of song titles, listened to the program broadcast, filled in and checked the names of songs and musical selections played, and presented the winning card to any one of the sponsor's stores in the broadcast area.

When Station WMBD refused to perform its contract to broadcast Mu\$ico, Clef, Inc., the owner of the program instituted suit for specific performance. Peoria Broadcasting Co. defended on the ground that Mu\$ico constituted a lottery. The court ruled that Mu\$ico was not a lottery and did not violate any statutes or laws of the United States of America. It decreed specific performance of the contract. A copy of the complaint, the answer and motion to strike answer in the Clef case is annexed hereto as Exhibit B-1 and a copy of the decree therein is annexed hereto as Exhibit B-2.

5. In 1939, the Solicitor of the Post Office Department issued two rulings with respect to whether Mu\$ico was a lottery. In the first ruling, dated July 1, 1939, the Solicitor advised the Postmaster at Monroe, Wisconsin, that Mu\$ico did not violate

the Federal lottery laws. In the second ruling, dated September 29, 1939, the Solicitor advised the Postmaster of Wyoming, Illinois, that Mušico did violate the Federal lottery laws.

Plaintiff's attorneys have been informed by the Solicitor of the Post Office Department in a letter dated May 3, 1949, that:

"It is likely that if the 'Mušico' plan were submitted to this office today, it would be held, in view of the change reflected in the enclosed notice, not to conflict with the postal lottery laws."

On information and belief: the "Mušico plan" referred to in the said letter of the Solicitor, dated May 3, 1949, was basically similar to the format of Mušico as described in paragraph 4 of this affidavit. However, the said "Mušico plan" did contain an additional feature in that cash prizes were awarded to the three persons who correctly checked off the songs played on any one of the first three rows on the Mušico card, and were first to telephone the radio station to give the correct answer with respect to the row so checked.

The notice which the Solicitor enclosed in his said letter of May 3, 1949 was as follows:

"Ruling of the Solicitor of the Post Office Department to Postmasters, February, 1947:

"**RULINGS ON LOTTERIES, GIFT ENTERPRISES, ETC.**—All postmasters should carefully note the following with regard to the present policy of the Office of the Solicitor in making rulings on lotteries, gift enterprises, etc., under Section 601, P. L. & R. 1940.

"In order for a prize scheme to be held in violation of this section, it is necessary to show (in addition to the fact that the prizes are awarded by means of lot or chance) that the 'consideration' involves, for example, the payment of money for the purchase of merchandise, chance or admission ticket, or as payment on an account, or requires an expenditure of substantial effort or time. On the other hand, if it is required merely that one's name be registered at a store in order to be eligible for the prize, consideration is not deemed to be present." (P. O. Bulletin February 13, 1947.)

6. On the radio program "Truth and Consequences" a prize of \$10,000 was offered for the correct identification of a well-known person, referred to as "Mr. Heartbeat," described in the following riddle which was repeated in the course of each broadcast of the program:

"Sigh Sigh Pie  
Half prince and pauper I.  
I'm drab they say  
But remember fair play.  
Ring Ring Hi."

Additional clues to the identity of this person were broadcast on the program each week until identification was made. Listeners were requested during the course of broadcasts to send in postcards bearing their names, addresses and telephone numbers. Listeners were also urged to contribute to the Heart Association, but such a contribution was not a condition of participation in the contest. Each week during the contest three postcards were selected at random and telephone calls were made in the course of the broadcast to the persons named on the cards. If the person called answered the telephone, he was asked to identify "Mr. Heartbeat." No clues were given to him at the time of this telephone call. A correct identification entitled him to the \$10,000 prize; a consolation prize consisting of a set of sterling silver was awarded in case of an incorrect answer.

The Solicitor of the Post Office Department on March 2, 1950, ruled that matter relating to the "Mr. Heartbeat" contest was mailable insofar as the Postal lottery laws are concerned.

A copy of the letter to the Solicitor requesting the ruling with respect to the "Mr. Heartbeat" contest and a copy of  
607 the Solicitor's ruling with regard thereto are hereto annexed as Exhibits C-1 and C-2 respectively.

7. (a) The Federal Communications Commission, by letter dated March 29, 1940, requested the Department of Justice of the United States to investigate and to take appropriate action with respect to Mu\$ico. Upon information and belief: the format of Mu\$ico as referred to the Department of Justice was virtually identical to the Mu\$ico Plan as described in paragraph 5 of this affidavit. The Department of Justice, by letter dated April 29, 1950, informed the Commission that no prosecutive action should be instituted with respect thereto. A copy of each of said letters is annexed hereto as Exhibits D-1 and D-2. A photostatic copy of a transcription of Mu\$ico as broadcast on February 16, 1940, is annexed hereto as Exhibit D-3. Said transcription is representative of Mu\$ico as referred to the Department of Justice by the Commission.

(b) At the same time as it made its request with respect to Mu\$ico, the Federal Communications Commission made similar requests with respect to four other programs, viz: "Songo," "Especially for You," "Sear's Grab Bag" and "Dixie Treasure Chest." Copies of the letters making said requests, together with enclosures, are annexed hereto as Exhibits E-1, E-2, E-3 and E-4.

The Federal Communications Commission in a press release dated March 29, 1940, described these four programs as follows:

"Songo (WIP) has similar characteristics (to Mu\$ico), employing cards furnished by the Nevins Drug Co., Philadelphia.



"In Especially For You (WFIL) a wheel is spun to determine from Philadelphia and suburban directories the person who is to be given a chance to win a Farnsworth radio. If the party selected has a telephone, he is called. If he answers the phone and answers two questions satisfactorily, he receives a radio. If he does not respond correctly, he is given two tickets to Mystery History, a network show.

608 "Sears Grab Bag (WISE) involves a box of numbered slips of paper placed in front of the Sears store in Asheville. The advertising manager of the store selects the numbers. If the holders of the numbers are in the broadcast audience, they receive prizes. If they are not listening in, the nearest numbers get the prizes.

"In the Dixie Treasure Chest (KRLD) program the announcer selects a number from the Dallas telephone directory. If the party called answers the telephone, he or she is asked 'What is the color of the border of the Dixie Margarine package?' If the party answers correctly, a prize of \$50 is the stake."

The Department of Justice by letters dated April 29, 1940, ruled that prospective action should not be instituted as to said four programs. A copy of each of said letters is annexed hereto as Exhibits E-5, E-6, E-7 and E-8.

8. The Federal Communications Commission in 1940 referred to the Department of Justice of the United States for possible prosecution under § 316 of the Communications Act, certain additional programs broadcast on various stations. The first such referral was by a letter from Chairman Fly of the Commission to the Attorney General dated February 19, 1940, transmitting documents relating to certain programs broadcast by Stations KWFT and KBST for Mead's Bakery and to a program known as "The Pot of Gold" broadcast over the Red network of NBC. Annexed hereto as Exhibit F-1 is a true copy of the letter of Chairman Fly dated February 19, 1940 and annexed hereto as Exhibits F-2, F-3 and F-4, respectively, are true copies of the documents enclosed with such letter, consisting of an affidavit of Joe B. Carrigan sworn to January 1, 1940, with certain documents attached; a letter from Joe A. Faucett to an inspector of the Federal Communications Commission dated December 11, 1939; and a transcript of one broadcast of the "Pot of Gold" program over Station WRC. Annexed hereto as Exhibit F-5 is a true copy of a press release of the Federal Communications Commission dated February 8, 1940 relating to this referral. Annexed hereto as Exhibit F-6 is a true copy of a letter from the Depart-

609 ment of Justice to Chairman Fly dated April 10, 1940 declining to institute prosecution under § 316 of the Communications Act with respect to the "Pot of Gold" and "Mead's Bakery" programs.

9. When the television show "Stop the Music" was instituted, it was desired to identify members of the public who had television sets and might be expected to view such programs; accordingly, members of the public were invited to send in postcards with their names and addresses to indicate that they were interested in becoming contestants. American Broadcasting Company, Inc. made application to the Solicitor of the Post Office Department for a ruling as to whether the proposed arrangements were in violation of the postal lottery statute, United States Code, Title 18, § 1302. A ruling was made by the Solicitor. Exhibit G-1 hereto annexed is a true copy of the letter requesting such ruling and Exhibit G-2 hereto annexed is a true copy of the Solicitor's reply containing such ruling.

10. Research has disclosed, and I therefore believe that, there have been no contrary court decisions since the foregoing rulings of the Post Office Department and of the Department of Justice.

11. No previous application has been made for the relief herein requested or any similar relief.

It is respectfully submitted that plaintiff's motion for summary judgment should be granted.

Max Freund.

MAX FREUND.

Sworn to before me this 22nd day of September 1952.

Julia D. Caputo,

JULIA D. CAPUTO,

*Notary Public for the State of New York.*

Qualified in New York County, No. 31-0559950.

Cert. filed with City Register, N. Y. County.

Commission expires March 30, 1953.

610 [Exhibit A omitted. Printed side page 44 ante.]

614 [Exhibit B-1 complaint omitted. Printed side page 29 ante.]

621

*Exhibit B-1, to affidavit*

In the Circuit Court of Peoria County

Equity

CLEF, INC., A CORPORATION, PLAINTIFF

*v.*

PEORIA BROADCASTING COMPANY, A CORPORATION, DEFENDANT

STATE OF ILLINOIS,

*County of Peoria, ss:*

ANSWER

Peoria Broadcasting Company, a Corporation, Defendant, by H. D. Morgan, its attorney, for answer to the Complaint of Clef, Inc., a Corporation, Plaintiff, says:

1. Defendant admits all of the allegations of the Complaint and that Plaintiff would be entitled to specific performance of its contract with Defendant for the furnishing of broadcasting facilities at the times and in the manner as set forth in the Complaint if the program referred to in such Complaint did not violate the sections of the Federal statutes hereinafter referred to.

2. For its defense to the Complaint and as its reason for refusing to perform its contract with Plaintiff for the furnishing of broadcasting facilities as set forth in the Complaint, Defendant states that said Mu\$ico program as specifically described in the said Complaint (in which form it is tendered for presentation to Defendant) violates the Federal statutes known and described as 47 U. S. Code 316, 18 U. S. Code 336 and 18 U. S. Code 387. Defendant further avers that 47 U. S. Code 316 provides:

"LOTTERIES AND OTHER SIMILAR DEVICES.—No person shall broadcast by means of any radio station for which a license is required by any law of the United States, and no person operating any such station shall knowingly permit the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes. Any person violating any provision of this section shall upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both, for each and every day during which such offense occurs."

Defendant further alleges that said Mu\$ico program as specifically described in the Complaint violates the statutory provision

of the Federal statute hereinabove set forth, and for such reason Defendant should not be required to perform its contract with Plaintiff in the presentation of said program.

3. Defendant further avers that it would be required in connection with the presentation of said Mu\$ico program as set forth in the Complaint to use the United States mails for the purpose of circulating cards or other material concerning said Mu\$ico program which would be in violation of the Federal statutes familiarly known and described as 18 U. S. Code 336 and 18 U. S. Code 387.

By reason of the matters and things set forth in this Answer, Defendant denies that it should be required to perform its contract with Plaintiff in violation of the Federal statutes herein referred to.

PEORIA BROADCASTING COMPANY,  
By \_\_\_\_\_,

*Its Attorney.*

H. D. MORGAN,

*Attorney-at-Law,*

*Central National Bank Bldg., Peoria, Ill.*

623

In the Circuit Court of Peoria County

Equity

CLEF, INC., A CORPORATION, PLAINTIFF *v.* PEORIA BROADCASTING  
COMPANY, A CORPORATION, DEFENDANT

STATE OF ILLINOIS,

*County of Peoria, ss:*

#### MOTION TO STRIKE ANSWER

Now comes Clef, Inc., a Corporation, Plaintiff, by Quinn, Quinn & O'Hern, its attorneys, and moves the Court to strike from the files in this cause the Answer of the Defendant, Peoria Broadcasting Company, herein filed and to enter judgment herein and grant the specific relief prayed in the Complaint of Plaintiff, and for reasons for said Motion shows to the Court the following:

1. That said Answer fails to set forth any facts constituting or fails to allege, any legal defense to Plaintiff's Complaint or any part thereof.

2. That, as shown by the Complaint and the detailed description of the Musico program therein contained, the said program does not violate any Federal statutes or any of the statutes set forth in the Answer of Defendant.

Wherefore, Plaintiff prays that said Answer be stricken from the files herein and that this Court enter a Decree granting to Plaintiff the relief prayed in the Complaint of specific performance of its contract with Defendant as therein set forth.

CLEF, INC.,

By \_\_\_\_\_,  
Its Attorneys.

QUINN, QUINN & O'HERN,  
Attorneys-at-Law,

1104 Lehmann Building, Peoria, Illinois.

624 [Exhibit B-2 omitted. Printed side page 37 ante.]

626 [Exhibits C-1 and C-2 omitted. Printed side page 39 ante.]

629 [Exhibits D-1 through E-1 omitted. Printed side page 83 ante.]

670 [Exhibit E-5 omitted. Printed side page 107 ante.]

671 [Exhibit E-6 omitted. Printed side page 82 ante.]

672 [Exhibit E-7 omitted. Printed side page 76 ante.]

673 [Exhibit E-8 omitted. Printed side page 70 ante.]

674 [Exhibits F-1 through F-4 omitted. Printed side page 48 ante.]

691 [Exhibit F-5 omitted. Printed side page 444 ante.]

692 [Exhibit F-6 omitted. Printed side page 62 ante.]

693 [Exhibit G-1 omitted. Printed side page 42 ante.]

694 [Exhibit G-2 omitted. Printed side page 43 ante.]

697 In United States District Court

Civil action No. 52-38

[Title omitted.]

*Notice of motion*

(Filed September 23, 1952)

SIRS. Please take notice that upon the amended complaint herein and upon the annexed affidavit of Benedict P. Cottone, sworn to the 11th day of August, 1952, and upon all the other

papers and proceedings heretofore filed and had herein, the undersigned will move the statutory three-judge District Court to be convened in the above-entitled action at such time and place as the Court may designate for an order dismissing the complaint or, in the alternative, directing that summary judgment be entered in favor of the United States of America and the Federal Communications Commission, defendants, on the grounds stated in the attached motions.

William J. Hickey,  
 WILLIAM J. HICKEY,  
*Special Assistant to the Attorney General,*  
*Attorney for the United States of America.*  
 Benedict P. Cottone,  
 BENEDICT P. COTTONE,  
*General Counsel,*  
 Richard A. Solomon,  
 RICHARD A. SOLOMON,  
*Assistant General Counsel.*

Dated: Washington, D. C., September 22, 1952.

NEWELL A. CLAPP,  
*Acting Assistant Attorney General,*  
 JAMES E. KILDAY,  
*Special Assistant to the Attorney General,*  
 MYLES J. LANE,  
*United States Attorney for the Southern District of New York,*  
*Attorneys for the United States of America.*

698 Daniel R. Ohlbaum,  
 DANIEL R. OHLBAUM,  
*Counsel,*  
*Attorneys for the Federal Communications Commission.*  
 To ROSENMAN GOLDMARK COLIN & KAYE,  
*Attorneys for Plaintiff, 575 Madison Avenue, New York 22,*  
*New York.*  
 Copy received September 22, 1952.  
 ROSENMAN GOLDMARK  
 COLIN & KAYE,  
*Attorneys for CBS.*

In United States District Court

Civil Action No. 52-38

[Title omitted.]

[File endorsement omitted.]

*Motions to dismiss the complaint or, in the alternative, for  
summary judgment*

(Filed September 23, 1952)

Upon the amended complaint herein and upon the annexed affidavit of Benedict P. Cottone, sworn to the 11th day of August 1952, and upon all other papers and proceedings heretofore filed and had herein, the defendants in the above-entitled cause move this Court that the amended complaint be dismissed or, in the alternative, for summary judgment in their favor.

A. The ground of the Motion to Dismiss the complaint is: Plaintiff fails to state a claim upon which relief can be granted.

B. The ground of the Motion for Summary Judgment is: The amended complaint together with the exhibits thereto annexed, the affidavit submitted on this motion, and the other papers and proceedings heretofore filed and had herein, show that there is no genuine issue as to any material fact and that defendants United States of America and the Federal Communications Commission are entitled to a judgment as a matter of law.

Dated: Washington, D. C., Sept. 22, 1952.

William J. Hickey,

WILLIAM J. HICKEY,

*Special Assistant to the Attorney General,  
Attorney for the United States of America.*

Benedict P. Cottone,

BENEDICT P. COTTONE,

*General Counsel,*

Richard A. Solomon,

RICHARD A. SOLOMON,

*Assistant General Counsel,*

Daniel R. Ohlbaum,

DANIEL R. OHLBAUM,

*Counsel,*

*Attorneys for the Federal Communications Commission.*

NEWELL A. CLAPP,

*Acting Assistant Attorney General,*

700 JAMES E. KILDAY,

*Special Assistant to the Attorney General,*

MYLES J. LANE,

*United States Attorney for the Southern District of New  
York.*

*Attorneys for the United States of America.*



701

*Affidavit of Benedict P. Cottone*

DISTRICT OF COLUMBIA,  
*City of Washington, ss:*

Benedict P. Cottone, being duly sworn, deposes and says:

1. He is the General Counsel of the Federal Communications Commission, and makes this affidavit in support of the Motion for Summary Judgment made by the United States of America and the Federal Communications Commission, defendants, and in opposition to the Motion for Summary Judgment made by the plaintiff.

2. He is familiar with the Commission's proceedings with respect to the promulgation of rules governing the broadcast of lottery information, and that the proceedings included the following:

(a) These proceedings concerning the promulgation of rules governing the broadcast of lottery information were instituted by the Commission's Notice of Proposed Rule Making, released August 5, 1948. Proposed rules interpreting Section 316 of the Communications Act of 1934, as amended, 47 U. S. C. Section 326, were appended to that Notice. The section referred to prohibited the broadcast of "any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance."

(b) In the light of the prior removal of Section 316 from the Communications Act of 1934, as amended, and recodification of this section as Section 1304 of the United States Criminal Code, 18 U. S. C. Section 1304, the Commission issued, on August 27, 1948, a Supplemental Notice of Proposed Rule Making.

702 (c) Pursuant to the above Notices, briefs and comments were filed with the Commission by the Radio Council of National Advertisers, Inc.; Premium Advertising Associates of America, Inc.; Radio Features, Inc.; Louis G. Cowan, Inc.; Maryland Broadcasting Company, Licensee of Station WITH; American Broadcasting Company, Inc.; National Broadcasting Company, Inc.; National Association of Broadcasters; Pierson and Ball; Arthur W. Scharfeld; and Columbia Broadcasting System, Inc., plaintiff in this action.

(d) On October 19, 1948, oral argument was held before the Commission en banc, in which National Association of Broadcasters; Maryland Broadcasting Company; Radio Features, Inc.; Radio Council of National Advertisers; American Broadcasting Company, Inc.; National Broadcasting Company, Inc.; W. Theodore Pierson; Arthur W. Scharfeld; Simons Broadcasting Company; Louis G. Cowan, Inc.; and Columbia Broadcasting System, Inc., plaintiff in this action, participated.

(e) After consideration of the briefs and comments filed, and of the oral arguments, the Commission released, on August 19, 1949, its Report and Order promulgating Sections 3.192, 3.292, and 3.692 of its Rules and Regulations, to enjoin the enforcement of which this action is brought. The Report and Order specified that these rules were to become effective on October 1, 1949. Commissioners Coy, Chairman, Hyde, and Jones did not participate in the adoption of the Report and Order of August 19, 1949, and Commissioner Hennock dissented from its adoption. By its Sixth Report and Order adopted on April 11, 1952 in Dockets No. 8736, et al., the Commission renumbered Section 3.692 as Section 3.656.

(f) The rules appended to the Report and Order of August 19, 1949, provide that no authorization for the operation of a broadcast station will be granted if the applicant proposes to follow or continue to follow a policy of broadcasting or permitting the broadcasting of any program violative of Section 1304 of 703 the United States Criminal Code. The rules further set forth with specificity certain types of programs which the Commission will in any event consider as falling within the provisions of that statute.

(g) This action and a similar action brought in the District Court for the Northern District of Illinois having been commenced, a temporary restraining order suspending the effectiveness of the rules here in issue with respect to the parties in litigation having been issued by the District Court for the Northern District of Illinois on September 13, 1949, and this Court having decided on September 19, 1949 to issue a similar order, the Commission, on September 21, 1949, issued an order postponing the effective date of said rules until at least thirty days after the ultimate determination of these actions.

3. A certified copy of the proceedings before the Commission in Docket 9113 (In re Promulgation of Rules Governing Broadcast of Lottery Information) is filed herewith and incorporated herein by reference as Exhibit A.

4. Plaintiff broadcasts one or more programs which contain features comprehended by one or more of the rules in issue in this case. After such rules become effective, the failure of plaintiff to discontinue the broadcasting of any or all of such programs would result in setting for hearing applications for renewal of licenses filed by plaintiff and, upon a finding that such programs have been or will continue to be carried, such applications would be denied in accordance with the policy set out in the rules in issue.

5. Attached hereto as Exhibits B and C are true photostatic copies of letters to the Commission dated, respectively, April 4, 1940, and April 11, 1940, and enclosures, received from radio station WGN, Inc. with respect to changes in the format of the radio program called "Musico" which were made prior to April 29, 1940.

704 6. Affiant submits in response to the contentions of the plaintiff, that:

(a) The Order and the Rules in issue are a proper application of the public policy announced by the Congress of the United States which the Commission must consider in fulfilling its duties under the Communications Act of 1934, as amended, and since denial of a license on the ground that the public interest would not be served by a grant is authorized by Sections 307, 308, 309, and 312 of the Communications Act, the promulgation and enforcement of the Order and Rules in issue are not in contravention of Section 9 (a) of the Administrative Procedure Act;

(b) The Commission in determining the qualifications of an applicant to hold a broadcast authorization may consider the doing of acts which constitute a violation of a criminal statute of the United States which expresses public policy in the broadcasting field as a ground for determining whether the public interest would be served by the grant of a license;

(c) The Order and the Rules in issue are a proper and reasonable exercise of the Commission's functions under the Communications Act of 1934, as amended;

(d) The Order and Rules are, as a matter of law, a correct interpretation of Section 1304 of the United States Criminal Code;

(e) The Order and the Rules do not violate Section 326 of the Communications Act of 1934, as amended;

(f) The Order and the Rules were issued in accordance with the Commission's Notice of August 27, 1948, after consideration of filed comments and briefs and an oral argument in which all interested parties participated, and were duly published in the Federal Register (14 F. R. 5429, September 1, 1949); accordingly the Order and the Rules in issue were promulgated in accordance with the provisions of Section 4 (a) and (b) of the Administrative Procedure Act;

705 (g) The Order and the Rules are not inconsistent with the provisions of Sections 5, 7, and 8 of the Administrative Procedure Act; and

(h) The Order and the Rules do not violate any of the provisions of the Constitution of the United States or of the Amendments thereto.

7. Affiant submits that Exhibits A, B, and C are relevant to the above issues sought to be raised and that they show that the Order in issue is within the Commission's authority conferred by the Communications Act of 1934, as amended; that it is in accordance with the Commission's Notice of August 27, 1948, pursuant to which an oral argument on which the Order is based was held; that it is proper and reasonable and in the public interest, convenience and necessity; that it is not violative of any of the provisions of the Constitution of the United States; and that there is no genuine issue as to any material fact.

Benedict P. Cottone.

BENEDICT P. COTTONE.

Subscribed and sworn to before me this 11th day of August 1952.

[SEAL]

FOREST L. MCCLENNING,

*Notary Public.*

My commission expires January 15, 1953.

706 In United States District Court, Southern District  
of New York

Civil Action No. 52-38

[File endorsement omitted.]

COLUMBIA BROADCASTING SYSTEM, INC., PLAINTIFF

*v.*

UNITED STATES OF AMERICA AND THE FEDERAL COMMUNICATIONS  
COMMISSION, DEFENDANTS

*Final judgment*

(Filed March 11, 1953)

This cause having come on to be heard on plaintiff's motion for summary judgment and on defendants' motion for an order dismissing the amended complaint or, in the alternative, for summary judgment, and the parties having stipulated the facts for the purposes of this action, and the Court having heard the arguments of counsel, and upon consideration thereof and of the briefs and documents filed by the parties, and the majority of the Court having rendered and filed an opinion on February 5, 1953 stating that it was unnecessary to make findings of fact in view of the facts having been stipulated by the parties and setting forth its conclusions of law and the relief to be granted, and a dissenting opinion having been filed on said date, it is hereby

Ordered, adjudged and decreed that plaintiff's motion for summary judgment is granted to the extent that defendants are permanently restrained and enjoined from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of defendant Federal Communications Commission's Rules adopted August 18, 1949, and that the Order of said defendant Federal Communications Commission dated August 18, 1949 adopting said subdivisions (2), (3) and (4) of paragraph (b) of said Sections 3.192, 3.292 and 3.656 of said Rules is to that extent vacated and set aside; and it is hereby further

Ordered, adjudged and decreed that plaintiff's motion for summary judgment and an injunction is denied with respect to paragraph (a) and paragraph (b) (1) of said Sections 3.192, 3.292 and 3.656 of said Rules; and that the said Order of said defendant Federal Communications Commission adopting the Rules is sustained with respect to said paragraphs (a) and (b) (1); and it is further

Ordered, adjudged and decreed that defendants' motion to dismiss the amended complaint is denied; and it is hereby further

Ordered, adjudged and decreed that defendants' motion for summary judgment is granted only with respect to paragraphs (a) and (b) (1) of Sections 3.192, 3.292 and 3.656 of said Rules and is in all other respects denied.

Dated: New York, March 10th, 1953.

VINCENT L. LEIBELL,  
*District Judge.*  
EDWARD WEINFELD,  
*District Judge.*

Dissenting:

CHARLES E. CLARK,  
*Judge Court of Appeals.*

Judgment entered: Mar. 11, 1953.

WILLIAM V. CONNELL,  
*Clerk.*

708 The foregoing judgment is hereby consented to as to form and plaintiff may submit same for signature and entry without further notice to defendants.

Dated: New York, February 19, 1953.

MYLES J. LANE,  
*United States Attorney for the  
Southern District of New York,  
Attorney for the Defendants.*

712 In United States District Court

Civil action No. 52-38

[Title omitted.]

(Order allowing appeal—filed May 8, 1953)

The Federal Communications Commission, defendant herein, having made and filed its petition praying for an appeal to the Supreme Court of the United States from the order of this Court in this cause entered on March 11, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendant's motion to dismiss the amended complaint herein or, in the alternative, for summary judgment in defendant's favor, and permanently restrained the Federal Communications Commission from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.191, 3.291 and 3.656 of its Rules and Regulations adopted August 18, 1949, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same hereby is allowed as prayed for and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court.

It is further ordered that citation shall issue in accordance with law.

CHARLES E. CLARK,  
*Judge of the United States Court of Appeals  
for the Second Circuit.*

VINCENT L. LEIBELL,  
*Judge of the United States District Court.*

EDWARD WEINFELD,  
*Judge of the United States District Court.*

Dated: May 8th, 1953.

715

In United States District Court

Civil Action No. 52-38

[Title omitted.]

*Assignment of errors and prayer for reversal*

(Filed May 8, 1953)

The Federal Communications Commission, defendant in the above entitled cause, in connection with its appeal to the Supreme Court, does hereby file the following assignment of errors upon which it will rely in its prosecution of said appeal from the order of the statutory three-judge United States District Court for the Southern District of New York, entered on the 11th day of March, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the complaint or, in the alternative, for summary judgment in defendants' favor, and permanently restrained the Federal Communications Commission for enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of its Rules and Regulations adopted August 18, 1949.

Said Court erred:

1. In holding that subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of the Rules and Regulations of the Federal Communications Commission adopted in its Report and Order of August 18, 1949 go beyond, and constitute an incorrect interpretation of, Section 1304, Title 18, United States Code and are an unlawful exercise of the rule making power.

2. In granting plaintiff's motion for summary judgment in part by permanently enjoining the Federal Communications Commission from enforcing said subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of the Commission's Rules and Regulations and, to that extent, vacating and setting aside the Commission's order adopting said Rules.

716 3. In denying defendants' motion to dismiss the amended complaint or, in the alternative, for summary judgment in favor of defendants, to the extent that the Court did so in denying the motion to dismiss the amended complaint and in granting defendants' motion for summary judgment in defendants' favor only in respect to paragraphs (a) and (b) (1) of Sections 3.192, 3.292 and 3.656 of the Commission's Rules and Regulations.

Wherefore, defendant Federal Communications Commission prays that the order entered herein on the 11th day of March, 1953, insofar as said order entered summary judgment in plaintiff's favor and denied defendants' motion to dismiss the amended complaint herein or, in the alternative, for summary judgment in defendants' favor, and permanently restrained the Federal Com-



munications Commission from enforcing subdivisions (2), (3) and (4) of paragraph (b) of Sections 3.192, 3.292 and 3.656 of its Rules and Regulations adopted August 18, 1949, be reversed, and that such other and further relief be granted as to the Court may seem just and proper.

Dated May 8, 1953.

Benedict P. Cottone,  
BENEDICT P. COTTONE,  
*General Counsel.*  
J. Roger Wollenberg,  
J. ROGER WOLLENBERG,  
*Assistant General Counsel.*  
Daniel R. Ohlbaum,  
DANIEL R. OHLBAUM,  
*Counsel.*

*Attorneys for the Federal Communications Commission.*

718

In United States District Court

Civil Action No. 52-38

[Title Omitted.]

[File endorsement omitted.]

*Order permitting transmission of original documents*

(Filed May 25, 1953)

In accordance with the provisions of the praecipe herein, and pursuant to the motion to transmit certain original documents on the appeal of the above-entitled cause to the Supreme Court of the United States, and upon the annexed consent by the attorneys for the plaintiff, it is

Ordered, that the original of all documents, transcripts, exhibits or other parts of this Court's records in the above-entitled cause, of which there are no copies on file, may all be forwarded in lieu of copies of such documents to the Clerk of the Supreme Court of the United States as part of the transcript of the record on the appeal herein.

CHARLES E. CLARK,  
*Judge of the United States Court of  
Appeals for the Second Circuit.*  
VINCENT L. LEIBELL,  
*Judge of the United  
States District Court.*  
EDWARD WEINFELD,  
*Judge of the United  
States District Court.*

Dated: May 21st, 1953.

724

In United States District Court

Civil Action No. 52-38

[Title omitted.]

[File endorsement omitted.]

*Praecipe*

(Filed May 8, 1953)

*To the Clerk of the United States District Court for the Southern District of New York:*

You will please prepare a transcript of the Record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court, and include in said transcript the following:

1. Complaint and exhibits thereto, filed by Columbia Broadcasting System, Inc. on September 2, 1949.

2. Affidavit of Joseph H. Ream, sworn to September 14, 1949, and exhibits thereto.

3. Stipulation permitting entry of temporary restraining order, dated September 21, 1949.

4. Temporary restraining order, entered September 23, 1949.

5. Notice of Clerk of Court advising that motion for interlocutory injunction was designated for hearing on October 27, 1949, dated October 17, 1949.

6. Stipulation postponing date of hearing of motion for interlocutory injunction, dated October 17, 1949, and filed October 24, 1949.

7. Answer of the United States of America and Federal Communications Commission, filed October —, 1949.

8. Stipulation for filing of amended complaint, together with amended complaint and exhibits thereto, filed September 22, 1952.

9. Notice of motion for summary judgment in favor of Columbia Broadcasting System, Inc., with supporting affidavit of Max Freund and exhibits thereto, filed September 22, 1952.

10. Notice of motion and motion to dismiss complaint, or for summary judgment in favor of United States of America and Federal Communications Commission, together with supporting affidavit of Benedict P. Cottone and exhibits thereto, filed September 22, 1952.

11. Order convening three-judge court, entered October 30, 1952.

12. Briefs submitted to the District Court on behalf of Columbia Broadcasting System, Inc., and defendants United States of America and Federal Communications Commission.

13. Opinions of District Court, dated February 5, 1953.

14. Final Judgment of District Court, entered March 11, 1953.

15. Petition for appeal.

16. Assignment of errors and prayer for reversal.

17. Statement as to jurisdiction.

18. Order allowing appeal.

19. Statement required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States.

20. Order permitting transmission of original documents.

21. Citation on appeal.

22. Admission of service of papers on appeal.

23. The praecipe with acknowledgement of service and waiver.

24. Clerk's certificate.

Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court of the United States, and is to be filed in the Office of the Clerk of the Supreme Court.

Dated: May 8, 1953.

Benedict P. Cottone,  
BENEDICT P. COTTONE,  
*General Counsel,*

J. Roger Wollenberg,  
J. ROGER WOLLENBERG,  
*Assistant General Counsel,*

Daniel R. Ohlbaum,  
DANIEL R. OHLBAUM,  
*Counsel,*

*Attorneys for the Federal Communications Commission.*

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In the Supreme Court of the United States

October Term, 1952

No. 859

FEDERAL COMMUNICATION COMMISSION, APPELLANT

v.

AMERICAN BROADCASTING COMPANY, INC.

No. 860

FEDERAL COMMUNICATIONS COMMISSION, APPELLANT

v.

NATIONAL BROADCASTING COMPANY, INC.

No. 861

FEDERAL COMMUNICATIONS COMMISSION, APPELLANT

v.

COLUMBIA BROADCASTING SYSTEM, INC.

*Statement of points to be relied upon*

(Filed June 27, 1953)

Appellant adopts for its statement of points upon which it intends to rely in its appeals to this Court the points contained in its Assignments of Errors heretofore filed.

Respectfully submitted.

R. A. Solomon,  
RICHARD A. SOLOMON,  
*Acting General Counsel,*  
J. Roger Wollenberg,  
J. ROGER WOLLENBERG,  
*Assistant General Counsel,*  
Daniel R. Ohlbaum,  
DANIEL R. OHLBAUM,  
*Counsel,*  
*Counsel for Appellant,*  
*Federal Communications Commission.*

304 FCC VS. AMERICAN BROADCASTING CO., INC., ET AL.

729 [Acknowledgments of service omitted in printing.]

733 [File Endorsement omitted.]

734 In the Supreme Court of the United States

October Term, 1953

No. 117

FEDERAL COMMUNICATIONS COMMISSION, APPELLANT

v.

AMERICAN BROADCASTING COMPANY, INC.

No. 118

FEDERAL COMMUNICATIONS COMMISSION, APPELLANT

v.

NATIONAL BROADCASTING COMPANY, INC.

No. 119

FEDERAL COMMUNICATIONS COMMISSION, APPELLANT

v.

COLUMBIA BROADCASTING SYSTEM, INC.

*Stipulation designating parts of the record to be printed*

(Filed July 21, 1953)

The parties to the above-entitled actions hereby stipulate as follows:

I. That the records in the above-entitled actions, which are companion actions concerning the same subject matter, be printed together as one record, with no duplication of identical documents.

II. That the following parts of the records in each of the actions should be printed by the Clerk of the Supreme Court:

A. With respect to Federal Communications Commission v. American Broadcasting Company, Inc., No. 117, the following:

1. Stipulation for filing of amended complaint, together with amended complaint and exhibits thereto, filed September 22, 1952. (Praecipe, Item 11.)

735 2. Letter to Judge Vincent L. Leibell from Alfred McCormack, dated October 14, 1952. (Praeipe, Item 12.)

3. Affidavit of G. B. Zorbaugh, sworn to September 19, 1952, and exhibits thereto. (Praeipe, Item 13.)

4. Notice of Motion for summary judgment on behalf of American Broadcasting Company, Inc., dated September 22, 1952. (Praeipe, Item 14.)

5. Notice of Motion and motion to dismiss complaint, or for summary judgment in favor of United States of America and Federal Communications Commission, together with supporting affidavit of Benedict P. Cottone and exhibits thereto, filed September 22, 1952, except certified copy of proceeding before the Federal Communications Commission in Docket 9113 (In Re Promulgation of Rules Governing Broadcast of Lottery Information), which is Exhibit A to affidavit of Benedict P. Cottone. (Praeipe, Item 15.)

6. Opinions of District Court, dated February 5, 1953. (Praeipe, Item 19.)

7. Final Judgment of District Court, entered March 11, 1953. (Praeipe, Item 20.)

8. Assignment of errors and prayer for reversal. (Praeipe, Item 22.)

9. Order allowing appeal. (Praeipe, Item 24.)

10. Order permitting transmission of original documents. (Praeipe, Item 26.)

11. The praeipe with acknowledgment of service and waiver. (Praeipe, Item 29.)

12. Clerk's certificate. (Praeipe, Item 30.)

B. With respect to Federal Communications Commission v. National Broadcasting Company, Inc., No. 118, the following:

1. Stipulation for filing of amended complaint dated September 16, 1952, and amended complaint of National Broadcasting Company, Inc., together with exhibits thereto, filed September 22, 1952. (Praeipe, Item 8.)

736 2. Notice of motion for summary judgment on behalf of National Broadcasting Company, Inc., together with affidavit of Gustav B. Margraf, sworn to September 18, 1952, and exhibits thereto, filed September 22, 1952. (Praeipe, Item 9.)

3. Notice of motion and motion to strike paragraphs 13, 14, and 16 of amended complaint, and to dismiss complaint, or for summary judgment on behalf of United States of America and the

Federal Communications Commission, together with affidavit of Benedict P. Cottone, sworn to August 1, 1952, and exhibits thereto, filed September 22, 1952, except certified copy of proceeding before the Federal Communications Commission in Docket 9113 (In Re Promulgation of Rules Governing Broadcast of Lottery Information), which is Exhibit A to affidavit of Benedict P. Cottone. (Praeipue, Item 10.)

4. Opinions of the district court, dated February 5, 1953. (Praeipue, Item 13.)

5. Final judgment of the district court, entered March 11, 1953. (Praeipue, Item 14.)

6. Assignment of errors and prayer for reversal. (Praeipue, Item 16.)

7. Order allowing appeal. (Praeipue, Item 18.)

8. Order permitting transmission of original documents. (Praeipue, Item 20.)

9. The praecipe with acknowledgment of service and waiver. (Praeipue, Item 23.)

10. Clerk's certificate. (Praeipue, Item 24.)

C. With respect to Federal Communications Commission v. Columbia Broadcasting System, Inc., No. 119, the following:

1. Stipulation for filing of amended complaint, together with amended complaint and exhibits thereto, filed September 22, 1952. (Praeipue, Item 8.)

737 2. Notice of motion for summary judgment in favor of Columbia Broadcasting System, Inc., with supporting affidavit of Max Freund and exhibits thereto, filed September 22, 1952. (Praeipue, Item 9.)

3. Notice of motion and motion to dismiss complaint, or for summary judgment in favor of United States of America and Federal Communications Commission, together with supporting affidavit of Benedict P. Cottone and exhibits thereto, filed September 22, 1952, except certified copy of proceeding before the Federal Communications Commission in Docket 9113 (In Re Promulgation of Rules Governing Broadcast of Lottery Information), which is Exhibit A to affidavit of Benedict P. Cottone. (Praeipue, Item 10.)

4. Opinions of district court, dated February 5, 1953. (Praeipue, Item 13.)

5. Final judgment of district court, entered March 11, 1953. (Praeipue, Item 14.)

6. Assignment of errors and prayer for reversal. (Praeipue, Item 16.)



7. Order allowing appeal. (Praeipe, Item 18.)
8. Order permitting transmission of original documents. (Praeipe, Item 20.)
9. The praeipe with acknowledgment of service and waiver. (Praeipe, Item 23.)
10. Clerk's certificate. (Praeipe, Item 24.)

III. That those parts of the record which are not printed may be referred to by any of the parties in their briefs as though they had been printed.

738 Respectfully submitted.

J. ROGER WOLLENBERG,  
*Counsel for Appellant,*  
*Federal Communications Commission*  
 CRAVATH, SWAINE & MOORE,  
 ALFRED McCORMACK,  
*Counsel for Appellee,*  
*American Broadcasting Company, Inc.*  
 CAHILL, GORDON, ZACHRY  
 & REINDEL,  
*Counsel for Appellee,*  
*National Broadcasting Company, Inc.*  
 ROSENMAN, GOLDMARK, COLIN  
 & KAYE,  
*Counsel for Appellee,*  
*Columbia Broadcasting System, Inc.*

Dated: July 9, 1953.

741 Supreme Court of the United States

Nos. 117, 118, and 119, October Term, 1953

[Title omitted.]

*Order noting probable jurisdiction*

October 12, 1953

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated for argument and one hour is allowed to each side.

The Chief Justice took no part in the consideration or decision of this question.